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THE

M TARY LAW EXAMINER

CONTAINING

THE QUESTIONS SET AT EXAMINATIONS IN MILITARY LAW UP TO JULY, 1911, TOGETHER WITH THE ANSWERS TO THEM AND REFERENCES TO THE OFFICIAL BOOKS.

BY

LIEUT.-COLONEL SISSON C. PRATT,

Royal Artillery (retired).

EIGHTH EDITION.

Revised and corrected up to July, 1911.

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Dear Sir

The "Military Law Examiner" has now been out of print for some time and can only be procured from a second hand book seller. I have pleasure in presenting you with a copy that I possess and hope it may be of service to you.

Yours sincerely

S C Pratt

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PREFACE TO EIGHTH EDITION.

◆

The majority of the questions are of recent date, but some of the older ones, with their wording modified, are retained in view of their suitability for instruction and of their probable recurrence. The answers are supplied with references to the official books that are now allowed at all examinations.

I am always glad to give my opinion on debatable points of military law to officers who write to me and enclose a stamped and directed envelope.

S. C. PRATT,
LIEUT.-COLONEL.

CHARMINSTER, DORSET,
August, *1911.*

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DEFINITIONS.

Active Service.—A force is on active service when it is engaged in operations against the enemy, or is engaged in military operations in a country or place occupied by an enemy, or is in military occupation of a foreign country.

Army Reserve.—A force composed of men who have left the colours and re-entered into civil life, but who are liable for the residue of the term of their original enlistment, to be recalled to the colours. Men who have not served in the Regular Forces but who are enlisted into the first class of the Army Reserve form the body called the Special Reserve.

Attestation consists in appearing before a Justice, answering certain questions in the attestation paper, and making and signing a declaration as to the truth of the answers and taking the oath of allegiance.

Beyond the Seas.—Out of the United Kingdom, the Channel Islands and the Isle of Man.

Colony.—Any part of His Majesty's Dominions, exclusive of the British Islands and British India, and includes Cyprus and any British Protectorate.

Court of Summary Jurisdiction. A court consisting of two Justices of the Peace or one Police or Stipendiary Magistrate, or persons similarly qualified.

Discharged with Disgrace.—Discharged, with ignominy, as incorrigible and worthless, for misconduct, or on account of a conviction for felony or a sentence of penal servitude.

Enemy includes all armed mutineers, armed rebels, armed rioters and pirates.

Equipment includes any article issued to a soldier for his use or entrusted to his care for military purposes and includes such articles as blankets and barrack furniture.

Exemplary Manner refers to the conduct of a man who has had no entry in his regimental conduct sheet for a continuous period of three years.

Foreign Country.—Any place out of the United Kingdom, a colony, or India, and not on the high seas.

Furlough.—Leave of absence for periods exceeding six days, granted to non-commissioned officers and soldiers.

Judicial Notice means that a Court will recognize a matter without formal evidence, *e.g.*, the duties and rank of officers.

Line of March.—Troops are on the line of march during the whole period of time between the date of departure and the date of arrival at destination.

Military Convict.—A person sentenced by court-martial to penal servitude.

Military Decoration.—Any medal, clasp, good conduct badge or decoration.

Military Prisoner.—A person sentenced by court-martial to imprisonment.

Military Reward.—Any gratuity, annuity, pension, or other pecuniary award.

Month.—In the Army Act and every Act of Parliament, a calendar month. In other documents, a lunar month, but a month in a sentence of imprisonment, detention, or field punishment means, unless the contrary is expressed, a calendar month.

Provost-Marshal.—An officer appointed *abroad* by the General in command whose duty is to arrest and detain offenders and carry out the sentences of courts-martial. He has the powers of a governor of a military prison as respects soldiers undergoing field punishment. At permanent camps *at home* he is the quartermaster of the Corps of Military Police.

Regular Forces.—Those forces that are liable to continuous military service in any part of the world, and include, subject to modifications, the Indian Forces, Marines, Malta Artillery, and Reserve Forces when called out.

Reserve Forces.—The Army Reserve and the Special Reserve.

Requisition of Emergency.—When a state of emergency is declared to exist, an officer in command, not below field rank, may be authorized to issue a requisition requiring Justices of the Peace to issue warrants for the provision of such animals, vessels and carriage as may be required, and when a proclamation ordering the Army Reserve to be called out on permanent service is in force, the means of transport may, if necessary, be purchased or forcibly acquired instead of being hired.

Route.—An order for the movement of troops or individual soldiers.

Soldier.—Subject to the modifications in the Act, this term includes non-commissioned officers and warrant officers not holding an honorary commission and every person subject to military law, with the exception of officers.

Summary Award refers to the power of a C.O. to deal with an offence summarily.

Summary Conviction.—Conviction by a court of summary jurisdiction, and does not refer to the summary award of a C.O. or any other military proceeding.

Superior Court.—The High Court of Justice in England and Ireland, and the Court of Session in Scotland.

Warrant Officers hold their appointments by warrant under the hand and seal of the Secretary of State for War. If holding an honorary commission they rank as officers.

Year.—Twelve calendar months.

ABBREVIATIONS USED IN REFERENCES AND TEXT

A. 04 - Examination at Royal Military Academy, 1904.
C. 06 - Examination at Royal Military College, 1906.
E.C. 09 - Examination for Commissions in Regular Army, 1909.
P.L. 03 - Promotion Examination for Lieutenants, 1903.
P.C. 00 - Promotion Examination for Captains, 1900.
S.E. 01 - Entrance Examination for Staff College, 1901.
S. 02 - Examination at Staff College, 1902.
M. 77 - Manual of Military Law, page 77.
M.A. 10 - Militia Act, 1882, Section 10.
R.F.A. 20 - Reserve Force Act, 1882. Section 20.
T.F.A. 10 - Territorial and Reserve Forces Act, Section 10.
R. 30 - Rules of Procedure, Rule 30.
S. 5 - Army Act, Section 5.
K. 40 - King's Regulations, paragraph 40.
C.B. - Confinement to Barracks.
C.O. - Commanding Officer.
H.L. - Imprisonment with hard labour.
D - Detention.
N.C. Officer - Non-Commissioned Officer.

MILITARY LAW EXAMINER.

SECTION I.

HISTORY OF MILITARY LAW.

Q. Describe briefly what is meant by Military Law. **E C. 09**

A. *Military Law* is the law which governs the soldier in peace and in war, at home and abroad, at all times and in all places. It deals with offences committed by officers, soldiers, and other persons who are, from circumstances, subjected, for the time being, to the same law as soldiers.

When used in a wider sense, the term includes not only the disciplinary, but the administrative law of the army, as, for instance, the law of enlistment and billeting.

Q. Why is it necessary to have a special code for the government of the army? **C. 09.**

A. To maintain discipline, the commission of a military offence must be followed by prompt and often severe punishment. Civil law is too slow in its action, and its elaborate code could not be properly administered by officers who are not legal experts. Moreover, many of the most serious military offences are, in civil law, either not recognised at all, or at most treated as breaches of contract.

Q. Where is military law contained and how is it continued in force? Is the soldier liable to the ordinary civil law in addition to his liabilities under military law? **P.C. 02**

A. 1. In the Army Act, supplemented by the Rules of Procedure, King's Regulations, and Army Orders. The Army Act is renewed from year to year by the Army Annual Act.

2. Yes, a man who becomes a soldier does not cease to be a citizen, but on the other hand his civil rights are subject to limitations as to change of domicile, debts, maintenance of family, etc. **M., 208.**

P.C. 06 **Q**. Give a brief explanation of the law as to the punishment by a military court of an offence which has been previously dealt with by a civil court and conversely as to the punishment by a civil court of an offence already dealt with by the military authorities.

A. A soldier who has been acquitted or convicted by a civil court is not liable to be tried for the same offence by a military court.

An acquittal or conviction by court-martial is no bar to a subsequent trial by a civil court; but the court, in awarding punishment, shall have regard to any military punishment already undergone. **S., 46, 157, 162.**

C 04 **Q**. Private A is charged with felony and sentenced to imprisonment by Court-Martial. State the law as to his being tried for the same offence by a civil court.

A. See last answer.

E.C. 94 **Q**. Explain briefly how the prerogative power of the Crown to issue Articles of War was gradually restricted and finally replaced by the statutory power that now exists.

A. The system of governing troops *on active service*, by Articles of War issued under the prerogative power of the Crown, continued long after the passing of the Mutiny Act of 1689, and did not actually cease till the prerogative power of issuing such articles was superseded in 1803 by a corresponding statutory power.

In the Mutiny Act of 1703 there was a proviso saving the power of the Crown to make Articles of War *beyond the seas in time of war*.

In 1712 statutory power was given to the Crown to make Articles of War for all troops serving in His Majesty's dominions, or elsewhere *beyond the seas*.

In 1715, the outbreak of the rebellion led to a similar statutory power being conferred for the governance of troops serving in *Great Britain and Ireland*.

In 1718, the powers granted by previous acts were combined, and the Crown acquired a complete *statutory* power for the government of the army in time of peace and war, whether at home or in the colonies, by means of the Mutiny Act and the Articles of War made thereunder, co-extensive with the *prerogative* power of governing troops serving in *foreign countries in time of war* by means of Articles of War made under the prerogative.

In 1803, the great change was made of extending the Mutiny Act and the *statutory* Articles of War to the army, whether *within or without the dominions of the Crown*, and the *prerogative* articles were finally superseded.

In 1879, by the consolidation of the provisions of the Mutiny Act and Articles of War in one statute, the separate issue of Articles of War was no longer necessary. **M., 6, 11-14.**

Q. When was the prerogative power of the Crown to issue Articles of War finally superseded by a corresponding statutory power, and how long did the statutory articles remain in force? **E.C. 98**

A. 1803. Until 1879. **M., 14.**

Q. Give a brief historical account of the "Articles of War." **S.E. 04**

A. Before the establishment of a standing army no necessity existed for a military code in time of peace, and troops raised in time of war were governed by Articles of War issued under the prerogative power of the Crown. At the close of a war the army was disbanded and the articles ceased to have effect. The establishment of a standing army in 1660 made it necessary to have articles and regulations to govern it in time of peace, and a statutory character was gradually given to the articles by the Mutiny Acts passed between 1689 and 1803. In 1879 the provisions of the Mutiny Act and Articles of War were consolidated in the present statute. The provisions as to the formation of any future Articles of War are laid down in S. 69 of the Army Act. **M., 6, 10, 14.**

A. 07 **Q**. When was the first Mutiny Act passed? What important constitutional principles were embodied in the preamble of the Act?

A. 1. In 1689.

2. (*a*) That the raising or keeping a standing army within the United Kingdom in *time of peace*, unless it be with the consent of Parliament, is against law.

(*b*) That no man can be forejudged of life or limb or subjected in peace to any kind of punishment within this realm by martial law, or in any other manner than by the judgment of his peers and according to the known and established laws of the realm. **M., 11.**

A. 04 **Q**. When did a standing army first appear in peace in the United Kingdom? What caused a lax state of discipline? How was this rectified?

A. 1. In 1660.

2. The growth of the army from the earliest times had always been regarded with jealousy and the small number of men forming the garrisons maintained before the Rebellion, and the armies of Charles II. and James II. were tolerated rather than sanctioned by Parliament, and were therefore governed by the Crown, rather as the retainers of a great man than as an army.

3. The loose discipline and general disaffection among the troops at the accession of William and Mary led to a Bill being introduced in Parliament in 1689 to punish mutineers and deserters from the army. Almost at the same time 800 men enlisted by James II., who had been ordered by William to embark for Holland, mutinied at Ipswich and marched northward, declaring that James was their

king. The matter was reported to Parliament, and doubtless facilitated the passing of the Bill, which is now known as the first Mutiny Act. **M.**, 10.

Q. Explain the origin of the military tribunal, now called a court-martial. S.E. 06

A. The military jurisdiction of the original court of the constable and marshal was enlarged by virtue of special commissions from the Crown. The deputies appointed consisted of officers who sat as a Court or Council of War at stated times, under an officer of rank, styled the President. During the reign of Charles II. these Councils of War were first given the name of courts-martial. **M.**, 9.

Q. Explain the difference between the courts-martial that were held before the passing of the Mutiny Act and those held at the present day, and show where the preamble of the Act is still preserved. S. 03

A. 1. In the earlier courts—
  (*a*) The general or governor of the garrison who convened the court ordinarily sat as president.
  (*b*) The power of the court was plenary.
  (*c*) The sentences were carried into execution without the confirmation required under the present law.
2. In the preamble to the Army Annual Act. **M.**, 10.

SECTION II.

THE MILITARY CODE.

P.C.08 **Q**. Military discipline is enforced partly by *law* and partly by *regulation*. Enumerate the various constituents of the military code which would come under the above headings.

A.

1. The Army Act.	Law.
2. The Rules of Procedure.	
3. The King's Regulations.	Regulations.
4. Army Orders.	
5. Royal Warrants.	
6. Orders in Council.	

There are also special Acts and Regulations for the governance of the Reserve and Territorial Forces.

A. 04 **Q**. When was the existing Army Act passed?

A. The Mutiny Act and Articles of War were consolidated in the Army Discipline Act of 1879 which was re-enacted with amendment in the Army Act of 1881. **M., 14.**

C. 09 **Q**. When and with what object is the Army Annual Act passed?

A. 1. *Time.*—The Army Annual Act is passed each year in April.

2. *Object.*—To extend the operation of the Army Act for 12 months, and thus provide for the discipline and regulation of the army. **M., 14 : 257.**

A. 06 **Q**. Explain how the Army Annual Act secures the constitutional principle of the control of Parliament over the discipline requisite for the government of the Army.

A. The Army Act, which is the basis of the military code has of itself no force, but is brought into operation each year by the Army Annual Act in order to guard against a larger force being kept than is considered necessary by Parliament, and to secure its right at all times to govern and control the army. **M. 14.**

Q. What is the Army Annual Act? State briefly its object and what it contains. **P.L.08**

A. It is a short Act passed annually for the purpose of providing for twelve months for the numbers, discipline and regulation of the army. In its preamble it is pointed out that, unless it be with the consent of Parliament, the maintenance of a standing army within the United Kingdom is illegal, that an army (of stated strength), as well as a force of marines, is necessary for the safety of the Kingdom, and that the discipline of these forces must be provided for.

The operation of the Army Act is accordingly extended for a further period of 12 months, and it is provided that it shall apply to all persons subject to military law, both at home and abroad.

The amendments of the Army Act that may be deemed necessary are next dealt with and the prices to be adopted in respect of billeting added in a schedule. **M., 14, 257.**

Q. How does the Army Act differ from other Parliamentary Acts, and how are amendments in it effected. P.C.08

A. (*a*) It is brought into operation *annually*, and is administered by military courts instead of civil judges.

(*b*) Amendments are inserted in the Army Annual Act. **S., 14.**

Q. State into how many parts the Army Act is divided, and the subject matter of each part. C. 09

A. The Act is divided into five parts—

1. *Discipline.*—Crimes and punishments, arrest and trial, execution of sentences, power to make Articles of War and Rules of Procedure.
2. *Enlistment.* — Proceedings for enlistment, periods of service, re-engagement and prolongation of service, discharge and transfer to reserve, special provisions.

3. *Billeting and impressment of carriages.*—The manner in which billeting and impressment is carried out and the offences of military and civil persons in connection therewith.
4. *General provisions* as to courts-martial, prisons, pay, exemptions of officers and soldiers, jurisdiction, evidence, legal penalties, and miscellaneous regulations.
5. *Application of the Act.*—Persons subject to military law, definitions, saving clauses, and schedules.

P.C. 10 **Q**. Show how provision is made under the Act for officers to exercise command over those subordinate to them.

A. Authority is given to His Majesty to make regulations as to the mode in which a military command is to be exercised. **S., 71; K., 217.**

S. 04 **Q**. How are alterations or amendments of the Army Act effected? When a section of the Army Act is amended what effect has the alteration on any corresponding Rules of Procedure?

A. 1. They are inserted in the next Army Annual Act.
2. Pending amendment in the Rules anything contrary to or inconsistent with the provisions of the Army Act must be regarded as invalid. **S., 70.**

P.C. 06 **Q**. Explain why the Articles of War were abolished.

A. The inconvenience of having a military code in two portions led to the consolidation of the Mutiny Act and the Articles of War in one statute in 1879 (now the Army Act). **M., 14.**

C. 93 **Q**. Under what provisos and by whom can Articles of War be made in the present day? Would these Articles be binding on civil as well as military courts?

A. 1. *Provisos*—
(*a*.) The penalty of death or penal servitude cannot be imposed by an Article of War, except for a crime expressly made liable to such punishment by the Army Act.

(*b*.) No crime punishable under the Army Act is liable to be punished otherwise than in accordance with its provisions.

2. The Sovereign.
3. Yes. **S., 69; M., 24.**

Q. In the event of Articles of War being issued at a future date, how would their jurisdiction and powers of punishment be limited? A. 07

A. 1. *Jurisdiction.*—They would apply only to officers and soldiers, while the Army Act affects, in some cases, civilians. **S., 69.**

2. *Punishment.*—See last answer (*a*) and (*b*).

Q. Is this power ever likely to be exercised? P.C. 05

A. No. The provisions of the Army Act are sufficient to meet all cases that could arise.

Q. Who has power to make Rules of Procedure? Specify the principal subjects with which these rules can deal. P.C 96

A. 1. The Sovereign, by rules signified under the hand of a Secretary of State.

2. The investigation and disposal of offences by a C.O.

The convening and constitution of courts-martial.

The framing of charges and preparation for defence.

The procedure at trials.

Confirmation and revision.

General provisions as to proceedings of courts.

Field-General courts-martial and courts of inquiry. **S., 70.**

Q. How are the Rules of Procedure amended? Prove by means of a quotation that the Rules must be framed in accordance with the provisions of the Army Act. E.C.06

A. 1. Amendments are effected by the Secretary of State and published in Army Orders.

2. *Proviso.*—That no such rules shall contain anything contrary to, or inconsistent with, the provisions of the Army Act. **S., 70.**

C 05 **Q**. Where are the Regulations to be found as to the manner in which Courts-Martial are to be conducted?

A. In the Rules of Procedure.

C. 02 **Q**. Explain what is meant by the expressions: King's Regulations, Royal Warrants.

A. The *King's Regulations* deal with discipline and interior economy, and comprise the standing regulations on the principal details of a soldier's life, whether in barracks, in the field, on the march, or on board ship. *Royal Warrants* are issued in connection with the permanent regulations for the pay, promotion, conditions of service, etc., in His Majesty's Forces.

C 94 **Q**. With what object are Army Orders issued? How often is the issue of them made, and by whom are they promulgated and signed?

A. 1. *Object.*—To inform the army as to any new Royal Warrants, general orders, regulations, and instructions, and to authorize any amendments in those at the time in force.

2. *Issue.*—Monthly.
3. *Promulgated.*—By direction of the Army Council.
4. *Signed.*—By the Secretary of the War Office.

E.C.92 **Q**. Explain briefly the meaning of the following terms:—Articles of War, Army Orders, Orders in Council.

A. *Articles of War* formed a part of the Military Code prior to 1879, when the existing Mutiny Act and Articles of War were consolidated in one statute. The Sovereign has still the power to make them, subject to the conditions that no crime specified in the Army Act can be punished otherwise than in accordance with its provisions, and that death and penal servitude can only be awarded for crimes expressly made liable to such punishments by the Army Act.

Army Orders.—All Royal Warrants, general orders, regulations and instructions to the army in the form of "army orders" are promulgated monthly by the direction of the Army Council.

Orders in Council are the regulations laid down by the Crown with the advice of the Privy Council. In matters of discipline they are only issued to meet cases that cannot be conveniently dealt with by Royal Warrants or Army Orders., **S**, 69; **M.**, 605.

Q. In what circumstances do the provisions of the Army Act becomes applicable to a force raised in a colony? P.C. 10

A. The legislature of a colony may apply all or any of the provisions of the Act to their forces subject to such adaptations as may be necessary. Where colonial forces are serving with Regulars, the Army Act (subject to exceptions that may be made by the G.O.C.) shall apply to those colonial forces to the extent and for the purpose of remedying any deficiencies of the enactments made by the colonial legislature. **S.**, 177.

Q. To what extent are the following subject to the provisions of the Army Act? P.C. 08

1. Officers on half-pay.
2. Reserve officers.
3. The Territorial Force.
4. The Canadian Permanent Forces.

A. 1. Always.
   2. When ordered on any duty or service to which they are liable.
   3. Officers, always.
   Men, when embodied, called out for defence, attached to Regulars, out for training or exercise. **S.**, 175, 176; **M.**, 414.
   4. See last answer.

Q. To what extent is a member of the force of Yeomanry subject to military law? C. 02

A. The Yeomanry now form part of the Territorial Force, and are, like other members of it, subject, when embodied, called out for defence, or when trained or exercised either alone or with regulars. **S.** 176.

Q. To what extent do the provisions of the Army Act apply to His Majesty's Indian Forces? P.C. 07

A. 1. All officers of British birth belonging to the Indian Army or the Indian Army Reserve (when called out) are subject to the Army Act.

2. All officers and soldiers of His Majesty's Indian forces who are natives of India are subject to the Indian Articles of War, but a court for their trial may be convened under the provisions of the Army Act. **S. 175, 180.**

P.C. 07 **Q**. Under what circumstances are men in the Army Reserve liable to be tried by court-martial? Show that in a modified form they are always subject to military law.

A. 1. When called out—
  (*a*) For training and exercise.
  (*b*) For duty in aid of the civil power.
  (*c*) On permanent service.
  (*d*) Employed in military service under the orders of an officer of the regular forces.

2. They are at all times in respect of liability to trial for certain offences specified in the Reserve Force Act, and for non-compliance with the orders and regulations in force under that Act. **S. 176; R.F.A., 6, 15.**

C. 04 **Q**. To what extent are the following persons subject to the Army Act:—An officer of the regular forces on half-pay; an officer on retired pay; a soldier of Marines?

A. 1. Always.

2. When employed on military service under an officer of the regular forces.

3. When not borne on the books of a ship in commission, and in most cases when serving on land. **S., 175, 179; M., 414.**

P.C 04 **Q**. The term "Regular Forces" includes H.M. "Indian Forces." Are then the rank and file of a Goorkha Regiment triable under the Act?

A. A soldier of the Indian Army who is a *native* of India is subject only to the Indian Articles of War, but a court for his trial may be convened under the Army Act. **S., 180.**

Q. To what extent are the following persons subject to military law:—A pensioner, a volunteer in India, a camp follower? E.C. 95

A. 1. A *pensioner*, when employed in military service under the orders of an officer of the regular forces.

2. A *volunteer in India* is subject to the Army Act so far as laid down by the law of India, and when serving with the regular forces, to the extent of supplementing the deficiencies of Indian law.

3. A *camp follower* when accompanying troops on active service beyond the seas (natives of India remain subject to the Indian military law). **S., 176, 177.**

Q. State briefly as to the application of the Army Act to persons not belonging to His Majesty's Forces. E.C. 08

A. All such persons may be tried by any court-martial other than a regimental court-martial, and are not liable to be summarily punished by a C.O. But natives of India will be punished in accordance with the Indian Articles of War. **S., 176, 184.**

Q. When are the following subject to military law? P.C. 05

1. An officer of the Royal Marine Artillery.
2. A newspaper correspondent.

A. 1. On shore and not subject to the Naval Discipline Act, but jurisdiction of the Admiralty not interfered with.

2. On active service and holding a pass entitling him to be treated as an officer. **S., 175, 179.**

Q. It is found that the military force available to put down a riot is insufficient in numbers. Under these circumstances, is it possible to obtain additional assistance by calling out men of the Army Reserve? S. 93

A. Yes. See S. 176; **R.F.A., 5.**

Q. Special Reservists are out for preliminary training at a regimental depôt. In the neighbourhood are living P.C. 06

a number of Army Reservists. In the event of troops being required to put down a riot, could the officer commanding troops avail himself of the services of the Special and Army Reservists? Give authorities.

A. The Special Reservists form part of the first class of the Army Reserve, and, being out for training, are subject to military law, and could be ordered out.

The army reservists, on the requisition in writing of a J.P., can be called out by the officer commanding the troops. **S., 71, 176; R.F.A., 5.**

P.L. 98 **Q**. What is the law affecting the liability of members of the army reserve to be called out on permanent service?

A. In case of imminent national danger or of great emergency, it shall be lawful for His Majesty in Council by proclamation, the occasion being first communicated to Parliament if then sitting, to order the army reserve to be called out on permanent service. If Parliament be not sitting, a proclamation shall be issued for its meeting within ten days.

Section A of the Reserve may be called out for service abroad for a period of twelve months without proclamation. **R.F.A., 12; M., 631.**

P.L. 00 **Q**. What is the meaning of the expression "amenable to military law and to the jurisdiction of the court?" Show how a soldier may be amenable to the one without being amenable to the other.

A. It means that the person referred to is liable to be tried by a court-martial under the Army Act. A person may be subject to the Army Act, but at the same time not be liable to be tried by all courts-martial, *e.g.*, an officer could not be tried by a district court-martial, nor could a field officer be tried by a general court-martial comprising a member under the rank of captain. **M., 413; R., 23.**

P.C. 07 **Q**. A soldier enters into an engagement to serve the Crown. To what extent does this fact limit his rights and duties as a citizen?

A. 1. He cannot, while in the service, change his domicile or parish.
2. He cannot be punished for wife desertion otherwise than by making a deduction from his pay.
3. He cannot be arrested for debt under £30.
4. He is unable to charge or assign his pay or pension. **M., 208.**

SECTION III.

MILITARY CUSTODY.

P.L. 05 **Q**. Define "Military Custody."

A. In the case of an officer or N.C. officer it usually means arrest. In the case of a soldier it refers to placing him in open arrest or putting him in close arrest under charge of a guard, piquet, patrol, sentry, or of a provost-marshal. **K., 465, 473.**

C. 02 **Q**. A soldier commits a minor offence; explain how the offender is treated.

A. A private soldier charged with an offence unaccompanied by drunkenness, violence, or insubordination, will usually be placed in open arrest, and will not quit barracks until his case has been disposed of by the officer commanding his company. He will attend all parades, but will not be detailed for duty. **K., 473, 475.**

C. 03 **Q**. "An offender, while in arrest, is not to be required to perform any duty." State the exceptions to the above general rule.

A. 1. He may be required to perform such duties as may be necessary to relieve him from the charge of any cash, stores, accounts, or office of which he may have charge, and for which he is responsible.

2. He may be required to bear arms by order of his C.O. in case of emergency or on the line of march, or, in a detention barrack, by order of the commandant, for the purposes of drill. **K., 482.**

Q. A soldier is taken into military custody. What are the regulations framed to prevent his undue detention pending (*a*) investigation of the charge, (*b*) the assembly of a court-martial if remanded for trial. **P.C. 09**

A. (*a*) All charges against him will be investigated without delay, and if practicable, *within* 48 *hours* after his committal to custody is reported to his C.O. Every case of detention (without investigation) beyond 48 hours is to be reported by the C.O. to the officer to whom application would be made to convene a court-martial.

(*b*) When an accused is remanded for trial an order for a regimental court-martial should be issued, or an application to a superior to convene a court-martial should be made without delay, and this delay should not ordinarily *exceed* 36 *hours*.

Where an officer or soldier (not on active service) is detained in custody for *more than eight days* without a court-martial for his trial being ordered to assemble, a special report of the necessity for further delay shall be made by his C.O. to the officer to whom application would be made to convene a court-martial, and a similar report shall be forwarded *every eight days* until a court-martial is assembled, or the soldier is released from custody. If more than 15 days in the United Kingdom (or 30 days elsewhere) elapse between the reception of the application for trial and the disposal of the case by the assembly of a district or general court-martial, or otherwise, the *convening officer* shall report the case to the Army Council.

S., 45; R., 1,5,17; K., 484.

P.C.08 **Q**. An officer is placed in close arrest and is ordered to be tried by court-martial. In order to prevent any undue delay in assembling a court, what reports must be sent in, and by whom?

A. See last answer (*b*).

S.E. 01 **Q**. Distinguish between *close* and *open* arrest (of an officer).

A. An officer in *close arrest* is not to leave his quarters or tent except to take exercise under supervision.

When under *open arrest* he may take exercise at stated periods within defined limits, but must not appear in the mess or any place of public assembly. An officer in open arrest may be permitted to leave his station for a particular purpose, or be directed to proceed to another station.

(An officer under arrest must not appear outside his quarters otherwise than in uniform, but without sash, sword, belt, or spurs.) **K. 466, 467.**

C. 02 **Q**. Describe the usual incidents that arise in connection with putting an officer under arrest.

A. 1. When immediate action is necessary an offender is placed under arrest by the senior officer of higher rank who is present. In the exceptional case of a "quarrel, fray, or disorder," an officer may place under arrest an officer senior to himself.

An officer is placed in arrest either directly or through the medium of a staff officer, and the fact must be at once reported to the C.O. of the offender. On being put in arrest an officer has to surrender his sword and is confined to his quarters.

2. When immediate action is not necessary it is best to report all misconduct to the C.O. of the offender, who will investigate the case. **S. 10,45; K. 469; M. 25.**

Q. State the regulations affecting the following incidents— **E.C. 98**

(1.) An officer puts under arrest an officer senior to himself.

(2.) An officer considers he has been wrongfully put under arrest.

A. (1.) In the exceptional cases of a "quarrel, fray, or disorder," a junior officer may order the arrest of a senior (even of a different corps) who is engaged in the disturbance.

(2.) Where redress cannot be obtained from his C.O., a complaint may be forwarded through the authorized channel to the Army Council for reference to the Sovereign. **S. 10,42.**

Q. What action should a C.O. take when an officer is placed in arrest? **P.L. 11**

A. When an officer is placed under arrest, whether afterwards released or not, the C.O. will invariably report the case without delay to the general or other senior officer responsible for discipline in the command. **K. 469.**

Q. When an officer has been placed in arrest, by whom should his release be ordered when such a course is deemed desirable? **P.L. 10**

A. The officer who imposed the arrest, or the superior to whom it may have been reported, but unless an arrest has been made through error, an officer should not be released without the sanction of the highest authority to whom the case may have been referred. **K. 468.**

Q. Explain what is meant by "privilege from arrest." **E.C. 99**

A. A person summoned to give evidence before a court-martial is privileged from arrest on civil process, *e.g.*, for debt, damages, etc., while going to or returning from the court, but there is no privilege from arrest on a criminal process. **S. 125.**

C. 10 **Q**. Can an officer who is a Peer or a Member of the House of Commons be arrested?

A. Yes, but the fact and cause of the arrest must be communicated to the Lord Chancellor or the Speaker as the case may be. **M. 26.**

C. 03 **Q**. State the instructions given in the King's Regulations as to the course to be pursued when a N.-C. officer has to place a soldier in arrest.

A. 1. The soldier is to be confined without altercation.
2. The N.C. officer should obtain the assistance of one or more privates to conduct the offender to the guard-room, and should himself avoid in any way coming in contact with him.
3. The confinement of the soldier is to be immediately reported to the officer commanding his company, or to the Adjutant. **K. 477.**

C. 05 **Q**. State the regulations affecting the following incidents:—

(*a*.) The placing in arrest of a soldier by a young N.-C. officer.
(*b*.) The treatment of minor offences committed by soldiers.

A. (*a*.) Except in cases of personal violence, or when on detached duties, lance-corporals and acting bombardiers with less than four years' service will not place soldiers in arrest, but will report the offence to the orderly-sergeant, who will act as the circumstances require.

(*b*) A soldier will not be confined in the guard detention room for offences unaccompanied by drunkenness, violence or insubordination (unless confinement is necessary to ensure his safe custody), but will be placed in open arrest, and will not quit barracks until his case has been disposed of. He will attend parades, but will not be detailed for duty. **K. 473, 475, 477.**

P.C. 05 **Q** At the commencement of a day's march, an offender is put in arrest. On arrival at a town, can he be placed in other than military custody?

A. A soldier in close arrest (not under sentence) or a soldier under sentence may be committed by an order signed by his commanding officer for temporary detention to any police-station, detention barrack, barrack detention room, or lock-up, for a period not exceeding seven days. **K. 476, 617.**

Q. What precautions should be taken when a private soldier who is drunk is placed in close arrest in a guard detention-room. What period of time is usually to elapse before investigation? C. 10

A. He may, if violent, be deprived of his boots, except if he is likely to suffer from cold. He is to be *visited* every two hours by a N.-C. officer with escort.

Should any symptoms of serious illness be observed, a medical officer is to be sent for.

Care is to be taken that he is perfectly sober before he is brought up before an officer. For this purpose 24 hours is usually allowed to elapse before the investigation. **K. 478.**

Q. Can the commander of a guard refuse to take charge of a soldier in arrest for drunkenness if he considers the man not drunk? E C. 09

A. No. The responsibility for an arrest falls upon the person who made it.

Q. What are the duties of the person who places a soldier in close arrest with respect to notifying the offence? E.C. 09

A. The person confining a soldier should deliver to the commander of the guard an account in writing signed by himself, of the offence with which he charges the soldier. This account or "charge" should be short and contain all the material points connected with the accusation made. If the "charge" is not delivered at the time of committal, a verbal report to the same effect is to be made. It should always be sent in as soon as possible, and its delivery should never be delayed beyond 24 hours. **S. 21, 45; K. 463; M. 28.**

Q. Specify the duties of a commander of a guard in reference to reporting to higher authorities the offences of soldiers committed to his custody. C. 09

A. The name and offence of every soldier taken into custody, and the rank and name of the officer or other person by whom he is charged, are to be entered in the guard report, and the report will be sent to the proper authority when the guard is relieved, and in any case within 24 hours.

The original "charge" or a copy of it is to be forwarded to the C.O. of the soldier. **S. 21**; **K. 463**.

C. 0 **Q**. Should the commander of a guard receive no "charge report" what action should he take?

A. The non-delivery of a charge should be noted in the guard report, and if it be not delivered within 24 hours a further report must be made to the officer to whom the guard report is furnished, who, if evidence is not forthcoming, will at the expiration of 48 hours order the release of the person in custody. **K. 463.**

S.E 03 **Q**. Circumstances render it desirable that an officer be released from arrest and a soldier be released from the guard detention room in which he has been confined. Specify the measures to be adopted.

A. The release from arrest must be sanctioned by the highest authority to whom the case may have been referred.

The release from a regimental guard detention room would be ordered by the C.O. of the regiment, but in case of a garrison guard detention room reference must be made to the Officer Commanding the garrison.

K. 468; **M. 27**

SECTION IV.

INVESTIGATION OF CHARGES.

Q. Distinguish between a *summary* and an *abstract* of evidence. P.C. 06

A. Before remanding a soldier for trial by court-martial, a *summary* of the evidence given on the investigation of the charge is taken down in writing. When an officer is charged with an offence the same course shall, if he requires it, be pursued. Where an officer is ordered for trial without any such taking of evidence, an *abstract* of the evidence to be adduced before the court-martial shall be delivered to him not less than 24 hours before his trial. **R. 3, 4, 8 ; K. 666.**

Q. Describe the investigation of a charge against a N.-C. officer or soldier by his company commander, and point out the regulations as to the record of punishments awarded by him to private soldiers. C. 06

A. All charges will be investigated at the company orderly-room, and for minor offences N.-C. officers below the rank of sergeant may be admonished or reprimanded and soldiers punished by a fine or C.B. The offences of private soldiers that are disposed of are entered on A.F. B. 281, which will be obtained from the orderly room and returned to it when the entry is made. All offences not disposed of by the company officer must be entered in the guard report, and will be dealt with subsequently by the C.O. When a company officer deals with a charge that is already entered in the guard report, he will report the fact to the orderly-room, and the entry "disposed of on A.F.—B. 81" will be made in the punishment column of that report. (During any investigation a soldier is to be deprived of his cap or any article that can be used as a missile.) **R 3; K. 481, 484 486.**

C 02 **Q**. Describe what happens when a private soldier, who has committed an offence, is brought to the orderly-room for the purpose of having his case investigated by his C.O.

A. 1. The offence is investigated in the orderly-room in the presence of the soldier, and the officer commanding his company will attend with the company conduct book.

2. After the nature of the offence charged has been made known to the accused, the witnesses who depose to the offence for which he has been confined, are examined.

3. The accused has a right to demand that the witnesses against him be sworn in every case that the C.O. has power to deal with summarily, and he will also have full liberty of cross-examination. He may apply to give evidence himself as a witness, and will give his evidence on oath if the other witnesses are sworn.

4. The C.O., after hearing the evidence, shall either dismiss the charge or dispose of the case summarily (subject to the right of the accused to elect to be tried by court-martial by S. 46), or shall refer the case to a superior, or shall adjourn the case for the purpose of having the evidence reduced to writing.

5. On the evidence being reduced to writing a different aspect may be given to the case, and the C.O. may (if the accused is a soldier and has not elected for trial by court-martial) re-hear the case and dispose of it summarily, or shall refer it to a superior, or shall remand the accused for trial by court-martial.

6. When once the accused has elected to be tried, the charge as read out to him from the guard-report should not be added to or increased in gravity. **R.** 3. 4. 5; **K.** 484. 487.

Q. Is it necessary for the evidence to be taken on oath? E.C.07

A. No, but if the accused demands it the oath must be administered whenever the C.O. has power to deal with the case summarily. **S. 46; R. 3.**

Q. A soldier in arrest, when before his C.O., claims P.L. 07

(*a*) That the evidence against him be taken on oath.

(*b*) That he shall be remanded for trial by district court-martial instead of submitting to a summary award.

In what circumstances should these claims be allowed?

A. (*a*) In every case that the C.O. has power to deal with summarily.

(*b*) In every case that a C.O. proposes to deal with summarily, otherwise than by awarding a minor punishment, and in every case where the award or finding involves a forfeiture of pay. **S. 46; R. 3**

Q. Are there any circumstances under which a soldier can claim a district court-martial after being summarily dealt with by his C.O.? C. 08

A. If the C.O. omits to ask the soldier the questions prescribed by S. 46 (8) the soldier can claim his right of trial at any time the same day, before the usual hour for commitment of soldiers under sentence.

Q. What is meant by the summary of evidence? S.E. 02

A. The *summary of evidence* is the evidence of the witnesses who are present when a charge is investigated, as well as the statement (if any) made by the accused on matters material to his defence, which is taken down in writing in the presence of the accused before the C.O. or such officer as he directs. The evidence of each witness shall be read over to him, and shall be signed by him.

If the accused has already given evidence, he may *apply* to give evidence to be taken down in the summary, but he cannot be *compelled* to repeat the evidence previously given. **R. 3 4.**

C. 09 **Q**. State under what circumstances a summary of evidence is prepared.

A. At the conclusion of the hearing of a charge, the C.O., if of opinion that the offence will probably require to be tried by court-martial, will adjourn the case for the purpose of having the evidence reduced to writing, *i.e.*, a summary made. **R** 3, 4.

P.L. 03 **Q**. By whom and in what manner should it be prepared?

A. *By whom*. It is taken down in the presence of the C.O. or of some officer deputed by him, but an officer who has given material evidence at the investigation must not be appointed for this purpose.

Manner. The evidence of the witnesses is taken down in writing in the presence of the accused, who should be allowed to cross-examine within reasonable limits.

The evidence of each witness shall be read over to him and signed by him.

The accused may apply to have his own evidence taken down, and any statement made by him which is material to his defence is added, but he should be warned that he is not bound to say anything and that any evidence he gives, or statement he makes, may be used as evidence against him. **R**. 3, 4.

P.C. 07 **Q**. Describe briefly the position and rights of an accused person when a summary of evidence is taken down in his presence.

A. 1. He can cross-examine the witnesses.

2. He may *apply* to have any evidence he has previously given to be taken down, but cannot be *compelled* to repeat the evidence previously given.

3. He may make a statement but cannot be required to sign it.

4. He should be warned that he is not bound to say anything, and that any evidence he gives or statement that he makes may be used against him at the trial. **R**. 3, 4.

Q. To what persons is the summary (or a copy) sent, and how do they utilize the information thus given. E C.06

A. 1. It is sent to the *convening officer* to give him notice of the case in order that he may convene a suitable court-martial to try it.

2. The convening officer forwards it on to the *president* of the court-martial to give him notice of the case to be tried.

3. The president will lay it before the *court-martial* on its assembly, and use it as a check on the evidence.

4. A copy of it must always be given to the accused for the purpose of giving him notice of the charge he will have to meet.

5. The *prosecutor* should have a copy, or at least should have access to it. **R**. 5, 14 17; **M**. 31, 604.

Q. What is the object of a "summary of evidence" being taken by a C.O.? P.C.09

A. In order that he may carefully consider the evidence in writing before making his final decision as to whether the case should be tried by court-martial. **R**. 5.

Q Describe how the "summary of evidence" may be utilised at a court-martial. C. 07

A. See later (Evidence).

Q. Is the summary of evidence admissible as evidence of the facts it contains? P.L.08

A. See later (Evidence).

Q. A soldier is charged with an offence. In what various ways may the C.O. deal with the case after investigation? P.L.08

A. 1. Dismiss the case.

2. Dispose of the case summarily.

3. Refer the case to a superior.

4. Adjourn the case for the purpose of having the evidence reduced to writing.

The *summary of evidence*, if taken, shall then be considered by the C.O., who shall either

1. Remand the accused for trial by court-martial.
2. Refer the case to a superior.
3. Re-hear the case, and if he thinks it desirable dispose of it summarily. **R.** 4. 5.

P.L.06 **Q.** On investigation of an offence sufficient evidence is not forthcoming, and there is no opportunity of carrying the investigation further at the time. What course should be pursued?

A. The accused may be released from arrest and ordered to do duty without prejudice to his re-arrest when further evidence is forthcoming. **K.** 490.

P.L.93 **Q.** When should the charge against a soldier be "dismissed" by the C.O.?

A. If in his opinion the evidence does not show that some offence against the Army Act has been committed, or if in his discretion, he thinks the charge ought not to be proceeded with. **R.** 4.

SECTION V.

POWERS OF COMMANDING OFFICER.

Q. Define the term "commanding officer" and point out how His Majesty has Parliamentary sanction to regulate the mode in which the military command of any officer may be exercised. P C 08

A. A "C.O." means, in relation to any person, the officer whose duty it is under the provisions of His Majesty's Regulations, or in the absence of any such provisions, under the custom of the service, to deal with a charge against that person of having committed an offence, that is to dispose of it on his own authority.

It also includes the officer commanding a company, troop or battery, so far as relates to the summary award of any punishment he is authorised to give, and so far as relates to a summary finding in a case of absence without leave.

Parliamentary sanction is given by S. 71 of Army Act. **R. 129; K. 456.**

Q. Whence does the C.O. derive his power to summarily punish a soldier? P.L. 07

A. S. 46 of the Army Act.

Q. Are there any offences which he is compelled to send for trial or bound to deal with summarily? P.C. 08

A. Drunkenness must be disposed of summarily unless the offence was committed on active service or on duty, or after the offender was warned for duty, or unless by reason of the drunkenness, the offender was found unfit for duty, or unless four instances of drunkenness have been recorded against the soldier in the conduct book within the 12 months preceding the date of the offence under disposal. (In cases where a fine is awarded, a soldier can always elect to be tried by court-martial.)

There are *no offences* which a C.O. is *compelled* to send forward for trial, as he may, if expedient, dismiss any case. **S. 46 ; R. 4.**

S.E.09 **Q**. A C.O., having heard the charge brought against an accused, is of opinion it should be proceeded with. In what circumstances is he debarred from disposing of the case summarily (or by R.C.M.)?

A. In cases of offences of private soldiers which he is not authorised to deal with without reference to a superior. N.-C. officers are not to be subjected to summary or minor punishments other than reprimands and admonition and deprivation of acting rank. **K. 487, 499.**

P.C.08 **Q**. A C.O. wishes to deal summarily with an offence which, in accordance with the usual procedure, he should send for trial by district court-martial. How would he obtain sanction for his action?

A. Refer to superior authority in a letter, stating circumstances of the case and accompanied by the soldier's conduct sheets. **K. 487.**

C.09 **Q**. Specify the various ways in which the superior officer may deal with the case.

A. See K. 548.

P.L.99 **Q**. Is a C.O. in any way restricted as to the cases he may send for trial by regimental court-martial?

A. A regimental court-martial is the court of the C.O., and can only try offences which the C.O. has power to deal with summarily, unless special permission is obtained from a superior. **K. 487.**

P.L.05 **Q**. The following cases are being investigated:—

(*a*) Making a false answer on attestation.
(*b*) Assaulting sergeant of escort.
(*c*) Permitting escape of a prisoner.
(*d*) Sentry leaving his post.

Point out conditions which would render a trial by (G.C.M. or D.C.M.) necessary or otherwise.

A. (*a*) Summarily treated, except in case of enlistment from Army Reserve.
(*b*) Summarily treated if charged under S. 10 (2), but not if charged under S. 8.
(*c*) Summarily treated, except if act is wilful.
(*d*) Summarily treated, except on active service.
K. 487.

Q. Under what sections of the Army Act do the following offences fall, and which of them can a C.O. dispose of summarily, without reference to a superior authority? C. 10

(1) Wilfully giving false evidence.
(2) Assisting to desert.
(3) Feigning disease.

A. (1) S. 29. Cannot be disposed of summarily.
(2) S. 14. May be punished by C.O.
(3) S. 18. May be punished by C.O. **K. 487.**

Q. Under what sections of the Army Act would the following offences be charged? **E.C.** 11

(*a*) Using threatening language regarding one superior officer to another superior.
(*b*) When ordered to do duty at a future time saying "I will not do it."
(*c*) Stealing goods the property of a comrade.

Can any of the above offences be dealt with by a C.O. without reference to a superior

A. (*a*) S. 8 (2). Yes.
(*b*) S. 8 (2) or S. 40. Yes.
(*c*) S. 18. No. **K. 487; M. 17.**

Q. The following offences are the subject of investigation. Could they be summarily dealt with, or would it be necessary to send the offender to be tried by district or general court-martial? C. 05

(1) Sentry sleeping on his post.
(2) Disobedience to a superior officer.
(3) Allowing a prisoner to escape.
(4) Breaking out of barracks.

A. (1) Summarily, except on active service.
(2) Summarily, except on active service or if charged under S. 9 (1).
(3) Summarily, except when the act is wilful.
(4) Summarily. **K. 487.**

P.L. 09 **Q.** Can a C.O., without reference to superior, dispose of the following offences? (1) Ill-treating a horse used in the public service. (2) Striking superior officer. (3) False answer on attestation—enlisting while belonging to the Army Reserve.

A. (1) Yes.
(2) Not if charged under S. 8, but can if charged under S. 10 (2).
(3) No. **K. 487.**

P C 06 **Q.** A soldier in arrest, while being conveyed to the guard-room, assaults the N.C. officer of the escort. Make out a "statement of offence" in two forms, one of which would admit of summary disposal and one which would necessitate a court-martial.

A. (*a*) "Uses violence to a person in whose custody he was placed" S. 10 (2). *Summary disposal.*
(*b*) "Uses violence to his superior officer being in execution of his office." *Court-martial.*
K. 487.

C. 07 **Q.** A soldier is taken in charge by a constable for disorderly conduct and assaulting the police. Could the C.O. of the accused deal with the case?

A. Yes. He could be tried by court-martial under S. 10 (2) or a C.O could deal with the case summarily. **K. 487.**

S.E. 10 **Q.** What courses are open to a C.O. in the following cases? Private A offers violence to a lance-corporal; the C.O. desires to dispose of the case summarily. Private B is charged with a serious offence, but sufficient evidence is not forthcoming. Private C is charged with an offence that a C.O. cannot deal with summarily. It appears doubtful whether the evidence will lead to conviction.

A. A. Refer to superior authority in a letter stating circumstances of the case, and accompanied by the soldier's conduct sheets.

B. Release from arrest, and order to do duty without prejudice to his re-arrest at a future time in respect of the charge.

C. As a rule the charge should be dismissed, but there may be cases where a court-martial affords the only means to the accused of decisively clearing his character.

K. 487, 488, 490.

Q. Enumerate the punishments that can be awarded to a private soldier by a commanding officer. **C.** 05

A. *Summary punishments affecting pay*—

1. Detention up to 28 days, but for the offence of absence without leave the number of days' detention, if it exceeds seven, must not be more than the number of days of absence.
2. Fines for drunkenness up to 10s.
3. Stoppages authorized by Army Act.

Minor Punishments—

4. Confinement to barracks up to 14 days.
5. Extra guards and piquets.
6. Admonition. **K. 493.**

Q. Point out the cases in which one punishment can be combined with another. **C.** 04

A. Subject to the punishment being applicable to the offence, the first five punishments may be awarded severally or conjointly, but if detention exceeds seven days, no minor punishment can be added, and detention can only be combined with fine if the accused is liable to trial by court-martial. **K. 494, 497.**

Q. Are there any restrictions placed on a C.O. with regard to awarding a "minor punishment" in addition to "detention" for the same offence? **C. 0**

A. See last answer.

P.L.03 **Q**. Explain how the power of a C.O., as laid down in the Army Act, is modified by the King's Regulations in respect of the awards of detention and fine.

A. 1. *Detention*—

(*a*) The power of awarding detention exceeding seven days, except in cases of absence without leave, will not be exercised by a C.O. under the rank of field officer.

(*b*) Detention is not to be awarded for drunkenness in cases not triable by court-martial except when the amount of unpaid fines amounts to 20s. and upwards.

2. *Fines*—

Fines for drunkenness are to be awarded in accordance with the scale of fines laid down, and not otherwise. **K. 494, 497, 512.**

P.C.07 **Q**. Describe how the offence of absence without leave, committed by a private soldier, can be summarily punished by his Commanding Officer.

A. 1. Detention up to 28 days, but the number of days' detention awarded, if it exceed seven, must not be more than the days of absence. When detention exceeding seven days is awarded, a minor punishment must not be given in addition.

2. Detention up to 168 hours.

3. Confinement to barracks up to 14 days, with or without punishment drill.

(Punishments 2 and 3 may be combined.)

K. 493, 494.

P.L. 02 **Q**. State the powers of detention of a C.O.

A. 1. Detention up to 28 days, but for the offence of absence without leave the number of days' detention awarded, if it exceeds seven, must not be more than the number of days of absence.

2. Detention exceeding seven days (except in cases of absence without leave) will not be awarded by a C.O. under the rank of field officer. **K. 493.**

Q. Point out the circumstances under which a C.O. is restricted from awarding a punishment of detention exceeding 168 hours. C. 07

A. 1. In cases of absence without leave not exceeding seven days.

2. When the C.O. is under the rank of field officer, and disposes of an offence other than absence. **K. 493.**

Q. State the rules as to awarding detention in hours and in days, and as to the commencement of periods of detention. C. 03

A. 1. Any award of detention up to seven days inclusive will be in hours; if exceeding seven days, in days.

2. The term of detention, when awarded in days, begins on the day of award; when in hours, at the hour at which the prisoner is received into detention rooms, or, if the prisoner cannot be the sooner received, not later than 24 hours after usual hour of committal on the day of award. **R. 6; K. 494.**

Q. Explain how fines for drunkenness are calculated. P.C. 07

A. See K. 512.

Q. Under what circumstances would a soldier be ordered to pay for his drunkenness a fine of ten shillings and a fine of twenty shillings? C. 07

A. 1. For the third or subsequent case of drunkenness which occurs within three months of the previous case.

2. Can only be awarded by sentence of a court-martial. **S. 19; K. 512.**

P.L. 01 **Q**. When is a C.O. bound to deal summarily with a charge of drunkenness?

A. In cases of simple drunkenness (unless the soldier has been drunk on not less than four occasions in the preceding twelve months). **S. 46; K. 509.**

E.C. 98 **Q**. Under what circumstances would a soldier be liable to be charged before a court-martial for being drunk?

A. A soldier may be tried by court-martial for drunkenness committed on active service or on duty or after being warned for duty, or if unfit for duty by reason of drunkenness or for any *simple* offence of drunkenness, provided that four previous instances have been recorded against him in the conduct book within the 12 months preceding the date of the offence. He may also elect to be tried instead of submitting to an award by his C.O. of fine or detention. **S. 46.**

P.C. 08 **Q**. Explain what is meant by "drunkenness on duty," and show how, if such an offence were sent for trial, the charge would be framed.

A. It means that the soldier, when actually on duty, is so drunk as to be unfit for the duty he is called upon to perform. It includes drunkenness on parade and on the line of march, and drunkenness on the line of march includes drunkenness during the whole time between the date of departure and the date of arrival at destination. The charge would be framed as "drunkenness," and the particulars should show that the accused, when drunk, was on duty. **K. 510; M. 21, 551.**

EC.97 **Q**. How does the absence from duty of a soldier by reason of his detention affect the calculation of the amount of a subsequent fine for drunkenness?

A. The time he is absent is not reckoned in the period since the last instance of drunkenness. **K. 512.**

P.L. 08 **Q**. When may detention be awarded by a C.O. for the offence of drunkenness?

A. 1. In cases of drunkenness which are triable by court-martial, when the attendant circumstances are of a nature to demand a severe punishment.

2. In cases where the amount of unpaid fines is 20s. and upwards. **K 497.**

Q. Gunner A is re-transferred from the Reserve to the Colours, and two days after is brought up for drunkenness. Three previous cases are recorded against him in his former service. Deal with the case. **P.C. 09**

A. Regimental entry and no fine. **K. 1916.**

Q. A soldier when drunk commits an offence for which he is sent for trial. State the considerations that decide whether a charge for drunkenness should at the same time be preferred. In the event of the charge for drunkenness not being preferred, how should the drunkenness be disposed of? **P.C. 06**

A. 1. If the soldier is liable to trial for drunkenness, and the C.O. thinks it a case that should be tried, he will be charged with the drunkenness before the court-martial.

2. If the soldier is not liable to trial, or the C.O. considers the case should not be tried, he will make an entry of the offence in the defaulter book, and either—

(*a*) Impose a fine if the soldier is liable thereto, or

(*b*) Make the following note in the punishment column: "No punishment; awaiting trial on another charge."

(If an entry of the court-martial is subsequently made, the above entry will be bracketed with it). **K. 511.**

Q. A soldier is sent for trial for an offence which is connected with one of drunkenness. If a charge for being drunk is not preferred, how would the offence of drunkenness be disposed of by his C.O.? **C. 02**

A. See last answer (*a*) and (*b*).

E.C. 10 **Q**. Private Z was reported absent without leave on 1st January, 1910. He was still absent on 24th January, 1910. State what steps should have been taken by the C.O.

A. 1. Equipment, clothing and kit at once placed in safe custody and an inventory taken.

2. Send descriptive report of man at once to the "Police Gazette," and duplicates to O.C. of depôt, police of locality, and police of place where man is supposed to have gone.

3. On 23rd January assemble a court of inquiry to determine the illegal absence.

S. 72; K. 514 673.

E.C. 07 **Q**. State the regulations which govern the calculation of forfeiture of pay for the offence of absence without leave.

A. In computing time for the purpose of forfeiture of pay:

(*a*) Six consecutive hours counts as *one day*, whether the absence is wholly in one calendar day, or partly in one calendar day and partly in another.

(*b*) Twelve consecutive hours counts as *two days*, provided that the absence is partly in one calendar day and partly in another.

(*c*) When a man's absence *prevented his fulfilling some military duty which was thrown on another person*, *one day* is any period, however short; two days is any such period with six hours added to it, provided that the absence is partly in one calendar day and partly in another.

(*d*) For absence over 12 hours a soldier forfeits one day's pay for every calendar day during any portion of which he is absent.

S. 138; P.W. 903.

P.L. 92 **Q**. What constitutes a day in reckoning forfeiture of pay?

A. No time shall be reckoned as a day unless the absence or detention has lasted for *six hours* or upwards, whether wholly in one day, or partly in one day and partly in another, or unless such absence prevented the absentee from fulfilling any military duty, which was thereby thrown upon some other person, when a day, for the purpose of deprivation of pay, is any period, however short. **S. 138; P.W. 903.**

Q. In cases of short absence without leave, it is important to know exactly when the absence commences and when it terminates. How is this calculated? **P.C. 08**

A. The absence commences at the time when the soldier, being called upon by some person in authority to answer his name, or perform some duty or fatigue, is found not to be present, or when the pass or furlough of an absentee expires.

The absence terminates at the time the soldier is taken into custody. **K. 502.**

Q. Time is an important factor in many military law questions, *e.g.*, the time within which a prisoner's case should be investigated, an application should be made for trial, or the trial should be commenced; computing absence without leave, awards of detention, fine for drunkenness, a liability to trial for drunkenness. **P.C. 93**

In calculating time in any of the above cases, when are Sundays, Good Friday, and Christmas Day counted in or omitted?

A. In the first three instances time is reckoned *exclusive* of Sunday, Good Friday, and Christmas Day.

In the last four instances time is reckoned to *include* the above-mentioned days. **R. 135.**

Q. Explain the circumstances which involve forfeiture of pay for one day. **P.L. 96**

A.
1. When a soldier has been absent without leave for *six* consecutive hours (whether wholly in one day, or partly in one day and partly in another).
2. When a soldier, owing to his absence without leave (however short), has been prevented

from fulfilling some military duty, which was thereby thrown on some other person.

S. 138; P.W. 903.

P.C.08 **Q**. Under what circumstances would a soldier forfeit two days' pay for the offence of absence without leave?

A. (*a*) When he has been absent twelve hours, partly in one calendar day and partly in another.

(*b*) When he has been prevented by his absence from fulfilling some military duty which was thereby thrown on another person, and his absence *exceeded* six hours, and was partly in one calendar day and partly in another.

S. 138; P.W. 903.

P.C.99 **Q**. What are the regulations as to forfeiture of G.C. badges?

A. One badge is forfeited for every regimental entry. All badges may be forfeited by sentence of court-martial, and must be forfeited on conviction of desertion, fraudulent enlistment, disgraceful conduct, and for a sentence exceeding 6 months' H.L. **P.W. 1021.**

E.C.01 **Q**. State the regulations as to the deductions from ordinary pay to make good loss or damage that may be awarded by a C.O. Can a soldier elect to be tried by a district court-martial when made aware that such deduction is about to be awarded?

A. 1. The total amount of the deductions shall not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny a day.

A soldier, in respect of the award, shall not be subjected to any deductions greater than is sufficient to make good the loss or damage.

2. A deduction from pay is a summary punishment, and a soldier has the right to elect to be dealt with by court-martial. **S. 46, 138.**

P.L.10 **Q**. May a soldier be placed under stoppages of pay for a private debt? How is the rule on the subject made known to the general public?

A. No. A notification is inserted in the newspapers of the Command that a soldier cannot be placed under stoppages for a private debt. **K. 442.**

Q. A private is fined by the civil power for drunkenness. How would his career be affected? S E. 03

A. The C.O. would arrange for payment of fine, and, if necessary, put man under stoppages. A regimental entry, unless a decision that it shall not be entered is obtained from an officer not below the rank of brigadier-general. **K. 1916.**

Q. Private C. is charged before a magistrate with wilfully breaking a shop window and is sentenced to pay the value of the window with costs, or in default to be imprisoned for 14 days. Could a C.O. pay the amount awarded by the Civil Court and deduct the same from the pay of the soldier? Quote authorities. E.C.06

A. Yes See S. 138 (7) and note to same.

Q. Explain what is meant by "minor punishments." Under what circumstances does the infliction of a minor punishment necessitate an entry in the regimental conduct book? C. 93

A.
1. The *minor punishments* which can be inflicted by a C.O. are those authorized by the King's Regulations, such as C.B., extra guards, and picquets, reprimand or severe reprimand, and admonition.
2. The only minor punishments that would be entered in the regimental conduct book are C.B. *exceeding* seven days, and the severe reprimand of a N.C. officer. **K. 493, 1916.**

Q. State the powers of a C.O. to award (1) C.B.; (2) detention and C.B. combined. C. 02

A.
1. C.B. up to 14 days (with liability to punishment drill for the first 10 days).
2. Detention not exceeding 168 hours can be combined with C.B. not exceeding 14 days. **K. 494.**

C. 03 **Q**. Describe in detail the position of a soldier who is "confined to barracks."

A. Soldiers *confined to barracks* will be required to answer to their names at uncertain hours throughout the day, and will be employed on fatigue duties to the fullest practicable extent, with a view to relieving well-conducted soldiers therefrom.

Defaulters will also attend parades, and take all duties in regular turn. When the fatigue duties are not sufficient to keep the defaulters fully employed, the C.O. may, at his discretion, order defaulters to attend *punishment drill*, provided that they shall not be liable to punishment drill after the expiration of 10 days from the date of the award of C.B.

Defaulters are not required to undergo any portion of their C.B. which may have lapsed by reason of their being in hospital, or under sentence, or employed on duty.

Every award of C.B. exceeding seven days is entered in the regimental conduct book. **K. 493. 494, 1916.**

C. 03 **Q**. Explain what is meant by punishment drill.

A. 1. Punishment drill is not to exceed one hour at a time, and is to consist of marching in quick time, and not of instruction drill.

2. It will be carried out in marching order for from two to four hours per diem, according to whether the offender belongs to a mounted or dismounted corps.

3. It will not be carried out on Sundays.

4. It is to be carried on in the barrack-yard or drill ground; or, when troops are in billets, by a march out on a public road.

5. It will not be carried on after retreat without the sanction of the brigade commander.

6. Defaulters are not required to undergo any portion of their punishment drill which may have lapsed by reason of their being in hospital, or under sentence, or employed on duty. **K. 494. 498.**

Q. A soldier is undergoing detention or C.B., what further punishment may he be awarded for a subsequent offence? C. 92.

A. He may be awarded further detention or C.B., or both, provided that no soldier shall be in detention for more than 28 consecutive days, and that the total consecutive punishment, including detention and C.B., shall not exceed 42 days. **K. 494.**

Q. In a combined award of detention and C.B., in what order must the punishment be carried out? P.L. 92

A. When an award includes detention and C.B., the latter will take effect at the termination of the detention awarded. **K. 494.**

Q. Explain fully the power of a C.O. to deal with offences committed by N.-C. officers under his command. S.E. 02

A. A C.O., if he does not send the case for trial, may deal with the offender by

1. *Admonition, reprimand or severe reprimand.*
2. *Deprivation of acting or lance rank.*
3. *Removal from an appointment.* (The sanction of an officer, not below the rank of Brigadier-General, must be obtained if the soldier's permanent rank is higher than that of corporal. When a N.-C. officer is not in every respect qualified to perform the duties of the rank to which he would revert, application may be made to the War Office for his reduction to a lower rank.)

(N.C. officers are not to be subject to summary or minor punishments (other than No. 1), nor to be punished by being placed in any lower position on the list of their rank.)

K. 302, 303, 499.

Q. As a C.O., use your discretion in dealing with the following cases:— P.C. 08

(1) Private A is reported to have been awarded by a magistrate, for breaking a window, a fine of 7s., or 7 days' H.L.

(2) A tradesman complains that Private B has bought a watch from him and that he cannot obtain payment for it.

A. (1) Pay the fine and stop from man's pay. If you think a regimental entry should not be made, case should be represented to an officer not below the rank of brigadier-general.

(2) Refer tradesman to K.R. 442. It is unwise for a C.O. to collect debts, but for credit of his corps may advise some settlement.

S. 133; K. 442, 1916.

C. 08 **Q.** A N.-C. officer and a private are charged with drunkenness unattended by aggravating circumstances. Are there any restrictions as to a C.O. dealing with either case?

A. The N.-C. officer can be admonished, reprimanded or severely reprimanded, or deprived of acting or lance rank, but is not otherwise subject to summary or minor punishments.

The private must be summarily punished in accordance with the scale of fines, unless four previous cases of drunkenness have been recorded against him within the previous 12 months. **K. 499, 512.**

C. 02 **Q.** A canteen sergeant has committed an offence. Describe the various ways in which a C.O. might deal with the offender.

A. He may be admonished, reprimanded or severely reprimanded or sent for trial by a district court-martial, or he may be removed from his appointment, with the sanction of an officer not below the rank of Brigadier-General, and will revert to his permanent grade, remaining as a supernumerary in that rank until absorbed in the first vacancy.

Exception.—If the sergeant is not in every respect qualified to perform the ordinary duties of his permanent rank, the C.O. may make application to the War Office for his reduction to a lower rank. **K. 302, 303, 499.**

Q. A sergeant and a lance-corporal are mixed up in a brawl in a town, and both are fined by a civil court for being drunk and disorderly. What further action would be taken by the military authorities in the two cases? C. 06

A. (*a*) The case is to be reported to an officer not below the rank of Brigadier-General. Should he consider it desirable to recommend the reduction of the offender, the matter will be reported to the War Office.

(*b*) The C.O. will deprive the lance-corporal of his stripe if he thinks such a course advisable in the interests of discipline.

(When the punishment is a fine which has been paid, the C.O. may apply to an officer not below the rank of Brigadier-General that the offence be not entered in the regimental conduct book.) **K. 499, 506, 1916.**

Q. When a N.-C. officer is convicted of any offence by the civil power, what procedure is to be adopted by the C.O.? P.L. 09

A. See last answer.

Q. As a C.O., deal with the following cases:— P.L. 08

(1) Private A is charged with drunkenness (third case, four months since previous case), striking a N.-C. officer and violently resisting the escort.

(2) Corporal C, remanded for trial by District Court-Martial, requests that he may be allowed to resign his rank and escape trial.

A. (1) Fine 7s. 6d. for the drunkenness, and for the assault award detention up to 28 days or send for trial under S. 10 (2), according to the circumstances of the case.

(2) The resignation must be sanctioned both by the C.O. and an officer not below the rank of brigadier-general. If allowed, an entry of the fact will be made in the N.-C. officer's attestation. **K. 301, 493, 512.**

P.C. 08 **Q**. How, as a C.O., would you deal with a colour-sergeant who has shown himself unfitted for his position and duties.

A. 1. Permit him to resign his colours and revert to sergeant, but he is not to be allowed to escape trial by court-martial without sanction of an officer not below brigadier-general.

2. Refer the case to the War Office for reduction by the Army Council under S. 183.

S. 183; K. 301, 305.

P.L. 09 **Q**. An orderly-room sergeant having been removed from his appointment, it is desired to reduce him to the rank of corporal. Can this be done, and, if so, by whom?

A. Yes. If not fully qualified for duties of permanent rank, apply to War Office for reduction by the Army Council. **S. 183; K. 303.**

P.L. 07 **Q**. A lance-sergeant is brought before his C.O., charged with drunkenness. In what different ways may the C.O. deal with the case?

A. 1. Severe reprimand.

2. Deprivation of lance-rank.

3. Send for trial by court-martial. **K. 493, 499.**

E.C. 11 **Q**. Lance-Corporal M is charged with drunkenness. Can the C.O. deal summarily with the case?

A. Yes. He can be severely reprimanded, or can be deprived of his lance-rank. **K. 493, 499.**

P.C. 08 **Q**. A C.O. awards a punishment of 14 days' detention, and a few minutes afterwards wishes to cancel his award and remand the soldier for trial by Regimental Court-Martial. Comment on the case.

A. The award is considered final when the prisoner has been removed from the presence of the C.O., and cannot afterwards be increased (though it may be diminished). As the soldier has been summarily punished, he is not liable to be tried by court-martial for the same offence. **S. 46 ; R. 6 ; M. 33.**

Q. Can an offender who has been punished by his C.O. be subsequently tried by a court-martial for the same offence? C. 08

A. No. See last answer.

Q. How may a C.O. alter a punishment after he has made his award? State the regulations concerning the alteration of the record after a punishment has been completed. C. 09

A. 1. He can diminish, but not increase it.
2. A C.O. has no power to alter the record, but an officer not below the rank of brigadier-general may, within 2 years of the award, direct that it be cancelled and the record expunged, or that the punishment be reduced. **R. 6 ; K. 507.**

Q. Enumerate the punishments that may be awarded N.-C. officers and men by the C.O., which do not involve the right of such N.-C. officers and men to claim trial by court-martial. S.E. 09

A. *N.-C. Officers.* 1. Reprimand, severe reprimand, or admonition.
2. Deprivation of acting or lance-rank.
3. Removal from appointment.

Soldiers. 1. Confinement to barracks.
2. Extra guards and picquets.
3. Admonition. **K. 493.**

Q. In what circumstances can a soldier claim his *right to be tried by a district court-martial* in lieu of submitting to a summary award? E C. 09

A. Where a C.O. proposes to deal with a case summarily, otherwise than by awarding a minor punishment, and in every case where the award or finding involves a forfeiture of pay, he must ask the soldier

whether he desires to be dealt with summarily or to be tried by a district court-martial (a soldier who claims trial will at once be released from arrest and may, on the following day, be allowed to reconsider his decision).
S. 46; R. 7; K. 490 (A), 496.

P.L. 08 **Q**. Private E is absent from tattoo 19th June, till mid-day 20th June. Private F is charged with making an improper reply to a N.-C. officer. The C.O. decides to award each of them 8 days' C.B. Have these men the right to elect trial?

A. Private E can elect trial, as his pay is forfeited by warrant for absence.

Private F can'not elect trial, as he has only been awarded a minor punishment. **S. 46; K. 492.**

P.L 05 **Q**. How is the fact that a soldier has elected trial brought to the notice of the court that tries him?

A. The prosecutor informs the court when the charges are read, and the fact is also noted on the form of application for trial and in red ink at the top of the charge-sheet. **M. 563, 582, 583.**

P.C. 08 **Q**. A C.O. awards to a soldier a punishment of 14 days' detention, without giving him an opportunity of claiming his right to be tried by a district court-martial. Comment on the case.

A. If the C.O. omits to ask the prescribed question, the soldier can claim his right of trial by court-martial at any time on the same day before the hour fixed for the commitment and release of soldiers under sentence.
R. 7.

C. 09 **Q**. Can a soldier be allowed to re-consider his decision to be tried by court-martial?

A. He is usually given an opportunity of doing so on the following day. **K. 496.**

S.E. 06 **Q**. Explain how a C.O. would deal with the following incidents:—

(*a*) Lance-Corporal A., on being deprived of his stripe, claims to be tried by court-martial.

(*b*) Private B, on being remanded for a regimental court-martial, claims to be tried by district court-martial.

A. (*a*) A N.-C. officer has no right of appeal under S. 46 (8), and a court-martial can take no notice of acting rank in awarding punishment. The C.O. would explain this, and refuse the claim.

(*b*) Private B has no legal right to claim a district court-martial, but a C.O. can use his discretion in dealing with the request.

S. 46, 183.

Q. Has a soldier the right to elect trial by district court-martial when he incurs forfeiture of pay through absence without leave, under operation of Pay Warrant? P.C.02

A. Yes. Appeal is allowed in all cases where pay is forfeited. **S. 46, 138.**

Q. At orderly-room, Lance-Corporal A. is charged with drunkenness; Private B. is charged with wilfully breaking a street lamp; Private C. is charged with absence from parade. Describe in each case the circumstances (if any) under which a C.O., dealing with the above offences, would be obliged to give the offender the option of being dealt with summarily or being tried by court-martial. E.C.96

A. A—No option, as a N.-C. officer has not the right of appeal.

B—Option given if he proposes to award a punishment other than a minor one.

C—Option allowed if he proposes to award a punishment other than a minor one, or if absence entails forfeiture of pay.

S. 46; K. 499.

P.L. 09 **Q**. Enumerate the punishments which a company commander is empowered to award in the case of private soldiers.

A. Seven days' C.B., fines for drunkenness, extra guards and piquets, admonition.

In the case of officers of less than three years' service, the C.B. may be limited by the C.O. to three days.

K. 501.

P.C. 08 **Q**. Explain how an officer commanding a company can deal with offences committed by N.-C. Officers.

A. He can admonish or reprimand (but not severely reprimand) a N.-C. Officer below the rank of sergeant or appointment of lance-sergeant. **K. 499.**

E.C. 04 **Q**. Explain how the officer commanding a company deals with the case of a soldier under his command who is reported to him as having committed an offence, and point out how an award of punishment by a company officer comes under the supervision of his C.O.

A. (*a*) All charges against N.-C. officers and soldiers will be first investigated by the officer commanding their company, who will usually deal with the minor offences of soldiers. If the company officer disposes of the case, he will enter the charge and award on A.F. B 281. If he decides to leave the case for the C.O. to deal with, he will send the charge for entry in the guard report, and the case will be investigated by the C.O. at the orderly-room.

(*b*) The minor offence reports, when completed, are returned to the orderly-room of the C.O.

K. 484, 485.

Q. When Lieutenant M came on company parade his colour-sergeant reported to him that Private X refused to turn out. Explain how Lieutenant M should deal with the case up to the time when Private X is brought before the C.O. E.C. 10

A. Immediately after parade have X arrested and brought by escort to company orderly-room, make out a "charge" on A.F. B. 252, investigate the case, remand accused to guard-room and send charge for entry in guard report. Attend subsequently at the orderly-room of C.O. with the company conduct book.

(The original "charge" would be made under S. 15, or possibly S. 9, according to circumstances.)

K. 475, 484, 485.

Q. You are on detachment with powers restricted to those of an officer commanding a company. A man commits an offence that can only be adequately punished by a C.O. How would you deal with the case? P.L. 05

A. According to the circumstances of the case, either—

1. Investigate the case, remand the prisoner and report to the C.O. for instructions.
2. Exercise full powers of C.O., but make immediate report of action taken, with reasons for it to the C.O. **K. 457.**

Q. With regard to awarding punishment, what is the position of an officer commanding a detachment? **C. 07**

A. He has the full powers of a C.O., but, if below the rank of substantive major, he may be restricted from the exercise of all or any of his powers by the C.O. of his corps or other superior authority.

In cases of emergency, the C.O. of a detachment can exercise his full powers, notwithstanding any restrictive order, but in such cases an immediate report of the action taken will be made. **K. 457.**

Q. How is the position of the C.O. of a detachment affected when his detachment is associated with others for purposes of discipline? E.C. 03

A. The officer placed in command of the whole is in the position of a C.O. The power of the other officers in charge of detachments remains in abeyance. **K. 458.**

S.E. 09 **Q.** A battalion is marching through its Territorial district. To what extent may the C.O. utilise civil prisons for the confinement of soldiers?

A. A soldier in arrest may, by an order signed by his C.O., be committed for temporary confinement to any detention barrack, barrack detention room, police station or lock-up, for any period not exceeding seven days.

K. 476, 617.

SECTION VI.

EXAMPLES OF COMMANDING OFFICER'S AWARDS.

Reference for examples of fines for drunkenness. **K. 512.**

Reference for examples of forfeiture of pay for absence. **S. 138; P W. 902, 903, 904.**

Reference for examples of summary and minor punishments by a C.O. **S. 46; K. 493, 494.**

Q. From a soldier's conduct sheet it appears that he was drunk on the following dates. What fines should have been awarded in each case:— C. 06

(1) 5th January, 1904 (first offence)?
(2) 20th February, 1904?
(3) 25th May, 1904?
(4) 10th August, 1904?
(5) 15th November, 1904?
(6) 14th April, 1905?
(7) 1st August, 1905?
(8) 10th April, 1906?

A. (1) No fine.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 10s.
(5) 7s. 6d.
(6) 7s. 6d.
(7) 7s. 6d.
(8) 5s.

Q. The following instances of drunkenness are recorded in a conduct sheet. What fines should have been awarded? C. 04

(1) 10th January, 1902.
(2) 1st February, 1902.
(3) 10th May, 1902.
(4) 1st August, 1902.

(5) 20th November, 1902.
(6) 5th January, 1903.
(7) 1st October, 1903.
(8) 10th July, 1904.

A. (1) No fine.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 10s.
(5) 7s. 6d.
(6) 10s.
(7) 5s.
(8) 5s.

C. 08 **Q** The following entries for drunkenness are recorded. State the fine in each case.

(1) 13th March, 1906 (first case).
(2) 3rd April, 1906.
(3) 27th July, 1906.
(4) 8th September, 1906.
(5) 10th March, 1907.
(6) 18th March, 1908.
(7) 3rd May, 1908.

A. (1) No fine.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 10s.
(5) 5s.
(6) 5s.
(7) 10s.

P.L 07 **Q**. The following cases of drunkenness are recorded against Private A. in his first year's service:—

(1) 1st February.
(2) 20th February.
(3) 21st May.
(4) 25th August.
(5) 28th November.

(On the 30th June he is awarded 7 days' detention, on the 15th October he is awarded 10 days' C.B.)

State the fines in each case.

A. (1) No fine.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 10s.
(5) 7s. 6d.

Q. A soldier has the following instances of drunkenness recorded against him:— **P. L 09**

(1) 3rd March, 1908.
(2) 5th April, 1908.
(Absent without leave 20th to 25th July.)
(3) 7th October, 1908, on duty.
(4) 15th October, 1908.
(5) 9th December, 1908.

State in each case the fine, and on which occasions he was liable to trial.

A. (1) Nil.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 10s.
(5) 10s.
Liable to trial in (3) and (5). **S. 46; K. 509.**

Q. A soldier has the following instances of drunkenness recorded against him:— **C. 10**

(1) 1st January (1st case).
(2) 5th February.
(3) 20th May (drunk on guard).
(4) 22nd August.
(5) 20th November.

In April, for 4 days' absence, awarded 168 hours' detention and 7 days' C.B. In July for 4 days absence awarded 10 days' C.B. Give the fines and state whether liable to trial by court-martial.

A. (1) No fine.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 10s.
(5) 10s.
Liable to trial in cases (3) and (5).
S. 46; [illegible]

P.C. 08 **Q**. Private A. absents himself on the 25th March, 1908, and returns drunk on the 4th of April. He was fined 5s. for drunkenness on the previous 1st of January, 1908. As a C.O. award a maximum punishment.

A. 11 days' detention. Fined 10s.

E.C. 08 **Q**. The following instances of drunkenness are recorded against a soldier. State the fines (if any) which should have been awarded in each case.

(1) 15th December, 1906.
(2) 2nd February, 1907.
(3) 10th May, 1907.
(4) 30th November, 1907.
(5) 5th February, 1908.

What would be the fine in case (4)* if the soldier had been absent from duty by reason of detention for the months of June and July.

A. (1) Nil.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 5s.
(5) 10s.
*(4) 7s. 6d.

C. 04 **Q**. For his third offence of drunkenness a soldier is fined 5s. on the 8th January, 1894. On the 12th April, 1894, he is charged at the orderly-room for having been absent ten days and returning drunk. State the maximum punishment that could be awarded by his Commanding Officer.

A. Ten days' detention.
Fined 10s.

C. 05 **Q**. From a soldier's defaulter sheet it appears he was drunk on the following dates. What fines should have been awarded?

(1) 4th January, 1904 (first offence).
(2) 15th February, 1904.
(3) 5th June, 1904.
(4) 10th September, 1904.
(5) 5th December, 1904.

(Absence from duty from 20th December, 1904, to 8th February, 1905.)
(6) 15th March, 1905.
(7) 20th November, 1905.

A. (1) No fine.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 7s. 6d.
(5) 10s.
(6) 10s.
(7) 5s.

Q. The following cases of drunkenness are recorded against a soldier. P.L. 06
(1) 3rd April, 1905 (first offence).
(2) 1st May, 1905.
(3) 1st September, 1905.
(4) 2nd October, 1905.
State the fine. Would the soldier be liable in any of the cases to be tried by court-martial?

A. (1) No fine.
(2) 2s. 6d.
(3) 7s. 6d.
(4) 10s.
The soldier is not liable for trial. **S. 46; K. 509.**

Q. Private A.B. enlisted 1st January, 1910, was absent and in detention from 1st to 30th June. The following instances of drunkenness were recorded. What was the maximum fine by a C.O., and on which occasions was he liable to trial (mark them with an asterisk). P.L. 10

A. (1) 10th February, 1910.
(2) 13th March, 1910, on parade.
(3) 31st May, 1910.
(4) 29th September, 1910, on picquet.
(5) 31st December, 1910.

A. (1) Nil.
*(2) 2s. 6d.
(3) 10s.
*(4) 10s.
*(5) 7s. 6d. **S. 46; K. 509.**

P.L. 06 **Q**. Two soldiers are absent from tattoo at 10 p.m. on the 20th January. One returns to barracks at 3.40 a.m. and the other at 10.15 on the following morning. What forfeiture of pay is entailed in each case?

A. 1. No forfeiture of pay unless the soldier escaped some duty, which was thrown upon another soldier, in which case he would lose *one day's pay*.

2. The soldier would forfeit *two days' pay*.

P.L. 03 **Q**. Explain the circumstances under which a soldier would forfeit one, two and three days' pay respectively (no duty being evaded).

A.	*One day's pay* ...	Six hours' absence
	Two days' pay ...	Twelve hours' absence, partly in one calendar day and partly in another.
	Three days' pay ...	Absence which embraces portions of three calendar days.

C. 02 **Q**. A soldier is absent from duty, and by reason of his absence his duty has to be taken by another soldier. Point out the circumstances under which he would forfeit one, two and three days' pay respectively.

A.	*One day's pay* ...	Any time, however short.
	Two days' pay ...	Any time exceeding six hours, which is partly in one calendar day and partly in another.
	Three days' pay ...	Any time which embraces portions of three calendar days.

P.L. 07 **Q**. To what number of days' forfeiture of pay are the following liable for absence without leave?

(1) Private T., absent from 10 p.m., 22nd May, until 5 p.m., 23rd May.

(2) Private U., absent from picquet mounting at 4.30 p.m., 22nd May, till 10 p.m., 22nd May.

(3) Private V., absent off pass from 6.30 a.m., 22nd May, until 10 p.m. same date.
(4) Private W., absent from parade at 10.30 a.m., 22nd May, until 1 a.m., 23rd May.

A. (1) Two days' pay.
(2) One day's pay.
(3) One day's pay.
(4) Two days' pay.

Q. How many days' pay would be forfeited in each of the following cases of absence? By what authority is the forfeiture made and where is it recorded? C. 05

(*a*) Private A., absent from 10 p.m. 1st June, to 5 a.m., 2nd June.
(*b*) Private B., absent from parade at 10 a.m. 1st June, till 11 a.m. 1st June.
(*c*) Private C., absent from picquet mounting 5 p.m. 1st June, till 1 a.m. 2nd June.

A. (*a*) One day's pay.
(*b*) Nil.
(*c*) Two days' pay.

Authority.—S. 138 and Pay Warrant. *Record* in column of remarks in conduct sheet.

Q. The following soldiers are absent from tattoo at 10 p.m. on the 1st January and return as follows:— C. 04

Private A. at 3 a.m. on 2nd January.
,, B. at 11 a.m. ,, ,,
,, C. at 10 p.m. ,, ,,
,, D. at 12.30 a.m. on 3rd January.

How many days' pay will be forfeited in each case? Have the offenders the right to elect for trial by court-martial?

A. A. Nil.

B. 2 days' pay.
C. 2 days' pay.
D. 3 days' pay.

There is always the option of trial when pay is forfeited. **S. 46.**

P.C. 09 **Q**. Write down the forfeiture of pay incurred by the following cases of absence without leave:—

(*a*) From 8 p.m. 1st March to 9 a.m. 2nd March.
(*b*) From 10 p.m. 1st March to 3 a.m. 2nd March.
(*c*) From 8 a.m. 1st March to 11 p.m. 1st March.
(*d*) From 5 p.m. 1st March to 3 a.m. 2nd March.
(*e*) From 11 p.m. 1st March to 2 a.m. 4th March.

A. (*a*) 2 days' pay.
(*b*) Nil.
(*c*) 1 day's pay.
(*d*) 1 day's pay.
(*e*) 4 days' pay.

C. 01 **Q**. A soldier is absent without leave from

(*a*) 10 p.m. 1st Nov., to 5 a.m. on 2nd Nov.
(*b*) 10 p.m. 1st Nov., to 6 a.m. on 3rd Nov.
(*c*) 9 a.m. 1st Nov., to 2 p.m. on 1st Nov.

How many days' pay are forfeited? What difference would arise in each case in the event of the soldier's absence preventing him fulfilling some military duty, which was thereby thrown upon another person?

A. (1) (*a*) One day's pay.
(*b*) Three days' pay.
(*c*) Nil.
(2) (*a*) Two days' pay.
(*b*) Three days' pay.
(*c*) One day's pay.

E.C. 05 **Q**. Apply the regulations as to forfeiture of pay for absence to the following cases:

(1) Private A., absent from picquet mounting at 5 p.m. 1st March and not returning till 10 p.m. 1st March.
(2) Private B., absent from tattoo, 10 p.m. 1st March, till 3 a.m. 2nd March.
(3) Private C., absent from tattoo, 10 p.m. 1st March, till 6 a.m. 2nd March.
(4) Private D., absent from tattoo, 10 p.m. 1st March, till 10 p.m. 2nd March.

A. (1) 1 day's pay.
(2) Nil.
(3) 1 day's pay.
(4) 2 days' pay.

Q. Private A. is absent from tattoo, 1st January till 3 a.m., 2nd January. P.L. 08
Private B. is absent from 8 p.m. 1st January, till tattoo, 16th January.
Private C. is absent from 7 p.m. 1st January, till 8 a.m. 2nd January.
Private D. is absent from 6 p.m., 1st January, till 7.30 p.m. same date, and is absent from mounting with night guard.

(*a.*) To what forfeiture of pay, if any, is each soldier liable.

(*b.*) Give maximum summary award of C.O. in cases of A. and B.

A. (*a.*) A. Nil.
B. 16 days' pay.
C. 2 days' pay.
D. 1 day's pay.

(*b*) A. 168 hours' D. and 14 days' C.B.
B. 16 days' D.

Q. A C.O. deals summarily with the following cases, and decides to award detention. State the maximum punishment and note any forfeiture of pay. C. 08

1. Private A, absent from 10 p.m., 1st May, to 5 a.m., 4th May.
2. Private B, absent from 10 p.m., 1st May, to 8 p.m., 11th May.
3. Private C, absent from 10 p.m., 1st May, to 9.30 p.m., 21st May.

A.
1. 168 hours' D. (forfeits 4 days' pay for absence).
2. 11 days' D. (forfeits 11 days' pay for absence).
3. 21 days' D. (forfeits 21 days' pay for absence).

(The soldiers also lose pay for every day of detention).

C. 06 **Q**. Apply the regulations as to forfeiture of pay for absence to the following cases:—

Private A., absent from tattoo, 10 p.m., 1st June, to 2 a.m., 2nd June.

Private B., absent from tattoo, 10 p.m., 1st June, to 7 a.m., 2nd June.

Private C., absent from tattoo, 10 p.m., 1st June, to 3 p.m., 2nd June.

Private D., absent from tattoo, 10 p.m., 1st June, to 6 a.m., 4th June.

A. A. Nil.
B. One day's pay.
C. Two days' pay.
D. Four days' pay.

E.C. 05 **Q**. As a C.O., deal summarily with the following offences, awarding the most severe punishment in your power:—

1. Private A., absent from 10 p.m. 1st September, till 3 a.m. 4th September.
2. Private B., absent from 10 p.m. 20th August, till 4 p.m. 5th September.
3. Private C., drunk on guard.
4. Lance-Corporal D., fighting in barracks.

A. 1. 168 hours' D., 14 days' C.B. (forfeits four days' pay).

2. 17 days' D. (forfeits 17 days' pay for absence).

3. 28 days' D.

4. Deprived of lance-stripe. **K. 499.**

C. 05 **Q**. Privates A. and B. are absent without leave for 5 and 10 days respectively. What is the maximum amount of detention that could be awarded by a C.O. in each case?

A. (*a*) 168 hours' D.

(*b*) Ten days' D.

Q. Private X. is charged with absence from 10 p.m. on the 10th March, till 11 a.m. on the 11th March. As a C.O. award the greatest minor punishment in your power. **P.L.05**

A. 14 days' C.B. (forfeits 2 days' pay).

Q. Private A. is on pass till midnight and returns sober at 1 a.m. (one hour late). Private B. with a similar pass is brought in by the picquet at 12.30 a.m. (half-an-hour late), drunk and with torn clothes. How under ordinary circumstances would the offenders be dealt with? **E.C.06**

A. 1. Private A. will be placed in open arrest, and his offence will be disposed of the next morning by the officer commanding his company, who will either admonish him or award some small punishment.

2. Private B. will be confined in the guard detention rooms till sober, when his case will be disposed of by the officer commanding his company or the C.O. If liable to fine for drunkenness, he will be fined, and given such additional punishment (if any) as may be deemed suitable to the case.

K. 473, 475, 501, 512.

Q. Private B. is absent off pass from midnight, 28th March, till 4 p.m. on the 1st April. As a C.O. award a maximum punishment. **P.C.08**

A. 168 hours' D., 14 days' C.B. (forfeits 4 days' pay).

Q. What is the maximum punishment that a C.O. can summarily award to a private soldier for (1) absence without leave for 5 days, (2) absence without leave for 10 days, (3) absence without leave for 28 days. **E.C.06**

A. (1) 168 hours' D. and 14 days' C.B. (forfeits 5 days' pay).

(2) 10 days' D. (forfeits 10 days' pay).

(3) 28 days' D. (forfeits 28 days' pay).

E.C.10 **Q**. A captain in command of a detachment has two soldiers brought before him. C has been absent 8 days, D has been insubordinate. What is the greatest punishment?

A. C, 8 days' D.

D, 168 hours' D.

E C.08 **Q**. Describe how a C.O. can deal with the offence of absence without leave for five days by awarding a maximum punishment either of (1) detention, (2) C.B., or (3) detention and C.B. In each case state the total amount of pay that would be forfeited in respect of the absence and the award made.

A. (1) 168 hours' D. .... 12 days' pay.

(2) 14 days' C.B. .... 5 days' pay.

(3) 168 hours' D. and 14 days' C.B. 12 days' pay.

P.L.05 **Q**. With the guidance of the notes given award punishment as a C.O. in the following cases.

Name.	Offence.	Remarks.
Private A.	Absent from tattoo, 10 p.m. 1st November, to 7 a.m. 2nd November.	Half maximum *minor* punishment.
Private B.	Absent from tattoo, 10 p.m. 1st November, to 5 a.m. 4th November.	Maximum punishment.
Private C.	Drunk in barracks, 1st November.	Last case, 25th July. Fine by scale.
Private D.	Drunk on guard, 1st November.	Half maximum punishment.

A. A. 7 days' C.B. (forfeits 1 day's pay).

B. 168 hours' D., 14 days' C.B. (forfeits 4 days' pay).

C. Fined 7s. 6d.

D. 14 days' D. and fine.

Q. As a C.O. deal summarily with the following offences, awarding in each case the maximum punishment. C. 05

A. Absent off pass, midnight, 15th December, till 7 a.m. 18th December.
B. Absent from tattoo, 10 p.m. 1st December, till 6 a.m. 18th December.
C. Drunk on guard, 17th December (third and last case of drunkenness on 15th September).
D. Insubordinate language to Corporal X., saying—

A. A. 168 hours' D. and 14 days' C.B. (forfeits 3 days' pay).
B. 18 days' D.
C. 28 days' D., fined 7s. 6d.
D. 28 days' D.

Q. As a C.O. deal summarily with the following cases. P.C. 07

Name.	Offence.	Remarks.
Private A.	Drunk in barracks, 1st July. Last case 30th March.	Maximum *minor* punishment and fine.
Private B.	Absent off pass, 12 midnight, 29th June, till 4 p m 2nd July.	Maximum punishment.
Private C.	Absent off pass, 10 p.m. 1st June, till 24th June.	Maximum punishment.
Lance-Corporal D.	Neglect of duty when orderly corporal.	Treat severely.

A. A. 14 days' C.B., fined 7s. 6d.
B. 168 hours' D., 14 days' C.B. (forfeits 3 days' pay).
C. 24 days' D. (forfeits 24 days' pay for absence).
D. Deprived of lance-stripe. **K. 499.**

C. 09 **Q**. As a C.O. award in each case the maximum punishment:—

Private A.—Absent from tattoo on 2nd to 3 a.m. on 3rd instant.

Private B.—Absent from tattoo on 2nd to 8 a.m. on 3rd instant.

Private C.—Drunk in town (2nd case).

Lance-Corporal D.—Neglect of duty.

Corporal E.—Absent from tattoo on 2nd to 3 a.m. on 3rd instant.

A. A. 168 hours' D. and 14 days' C.B.
B. 168 hours' D. and 14 days' C.B. (forfeits one day's pay).
C. Fined 2s. 6d., 14 days' C.B.
D. Deprived of lance stripe.
E. Severe reprimand. **K. 493, 499.**

C. 10 **Q**. As a C.O., award in each case the maximum punishment:—

Private A.—Absent without leave from 10 p.m. 1st May till 5 a.m. 3rd May.

Private B.—(1) Drunk 3rd May (two previous cases, last case 6th January).
(2) Resisting the escort.
(3) Breaking a pane of glass, value 1s. 3d.

Private C.—Absent off pass, midnight 15th April till 6 a.m. 3rd May.

Sergeant D.—Neglect of duty.

Lance-Corporal E.—Fighting in barracks.

A. A. 168 hours' D. and 14 days' C.B. (forfeits 3 days' pay).
B. 28 days' D., fined 7s. 6d., stoppages 1s. 3d.
C. 18 days' D. (forfeits 18 days' pay for absence).
D. Severe reprimand.
E. Deprived of lance stripe. **K. 493, 499.**

Q. As a C.O. deal summarily with the following offences, awarding in each case the maximum punishment. **E.C.07**

Private A. Absent off pass 10 p.m., 1st October, to 8 a.m. 5th October.

Private B.—Fighting in barracks.

Sergeant C.—Neglect of duty when orderly-sergeant.

A. A. 168 hours' D. and 14 days' C.B. (forfeits 5 days' pay).
B. 28 days' D.
C. Severe reprimand. **K. 493.**

Q. As a C.O., deal summarily with the following offences, awarding the most severe punishment in your power. **C. 06**

Private B.—Absent from 10 p.m., 1st September, till 6 a.m. 12th September.

Private C.—Drunk on guard (not liable to fine).

Lance-Corporal D.—Fighting in barracks.

A. B. 12 days' D. (forfeits 12 days' pay).
C. 28 days' D.
D. Deprived lance-stripe. **K. 499.**

Q. The following cases are brought before you at orderly-room on 6th April, 1906. As a Commanding Officer, who has not attained field rank, award in each case the maximum summary punishment in your power: **E.C.06**

Private A.—Absent without leave 4 days and returning drunk to barracks (drunk three times before; last case 25th November, 1905).

Private B.—Fighting in barracks.

A. 1. 168 hours' D., 14 days' C.B. Fined 7s. 6d. (forfeits four days' pay).
2. 168 hours' D. and 14 days' C.B.

Q. Make comments upon the following entries of summary awards:— **C. 10**

Private A.—8 days' detention and 10 days' C.B.
Private B.—3 days' detention.
Private C.—168 hours' H.L.

Lance-Sergeant D.—Severely reprimanded and deprived of lance stripe.

Private E.—96 hours' detention (for drunk in barracks, 1st case).

A. A. Omit the 10 days' C.B. Punishments cannot be combined.

B. Should be 72 hours' D.

C. A C.O. cannot award H.L. Should be 168 hours' D.

D. These punishments cannot be combined. Omit one.

E. The drunkenness not liable to trial, and therefore detention cannot be awarded for the offence.

K. 497,499.

C. 09 **Q.** Comment on the following awards:—

(*a*) Private A. is awarded 5 days' detention and 9 days' C.B.

(*b*) Sergeant B. is awarded severe reprimand and two extra picquets.

(*c*) Private C is awarded 9 days' detention and 7 days' C.B.

A. (*a*) Should be 120 hours' D. and 9 days' C.B.

(*b*) Extra picquets cannot be awarded to a N.-C. officer as a punishment.

(*c*) When D. exceeds 7 days, C.B. must not be added.

P.C. 08 **Q.** When are the punishments of D. and C.B., awarded by a C.O., deemed to commence.

A. D. or C.B. in days will begin on the first minute of the day of award. D. in hours will begin at the hour the soldier under sentence is received into detention rooms (usually 2 p.m.), or if he cannot then be received, 24 hours later on the next day. **R. 6.**

C. 09 **Q**. A C.O. awards the following punishments:—

Private A., 15 days' detention
Private B., 168 hours' detention.

When does the term of detention begin in each case?

A. See last answer.

P.C. 09 **Q**. Privates A. and B. are awarded 168 hours' D. and 8 days' D. respectively on the 15th April. Neither can be received into detention barracks till the 17th April. Explain when each award will terminate.

A. The punishment of A. counts from 2 p.m. on the 16th April, and terminates at 2 p.m. on 23rd April. That of B. is considered to have commenced at the first minute of the 15th April and to be completed at midnight on the 22nd April, but practically the prisoner is released at 2 p.m., and is confined to barracks for the rest of the day. (A. forfeits 7 days' pay and B. eight days.) **R. 6; P.W. 905.**

C. 09 **Q**. When would the following awards (in the ordinary course of events) commence and finish?:—

(1) Private A.—14 days' C.B. on 13th October.
(2) Private B.—168 hours' D. on the 13th October.
(3) Private C.—14 days' D. on 13th October.

A. A. Commence from time of award, finish at midnight 26th October.

B. Commence 2 p.m. 13th October, finish at 2 p.m. 20th October.

C. Commence at first minute on day of award, finish 2 p.m. 26th October. **R. 6.**

A. 04 **Q**. On the 1st December a soldier is awarded 96 hours' D. and 7 days' C.B. When will his punishment expire? He goes to detention rooms on the day of award.

A. Midnight, 11th December. **R. 6.**

P.L.02 **Q**. Three soldiers are brought before a C.O. at orderly-room on the 1st September and awarded the following punishments:—(1) 48 hours' D.; (2) 10 days' D.; (3) 10 days' C.B. When will these punishments severally expire?

A. (1) 2 p.m., 3rd September.
(2) 2 p.m., 10th September.
(3) 12 midnight, 10th September. **R. 6.**

E.C.97 **Q**. A C.O. at 9 a.m. on the 1st of June makes the following awards:—

(*a*) 168 hours' D.
(*b*) Eight days' D.
(*c*) Ten days' C.B., followed by a second award on the 4th of June of seven days' C.B.
(*d*) Ten days' C.B., followed by a second award on the 8th June of 96 hours' D.
(*e*) Ten days' D., followed by a second award on the 5th June of ten days' D.

On what day and at what hour would these punishments respectively terminate?

A. (*a*) 2 p.m., 8th June.
(*b*) 2 p.m., 8th June.
(*c*) 12 midnight, 17th June.
(*d*) 2 p.m., 12th June.
(*e*) 2 p.m., 14th June. **R. 6; K. 494.**

E.C.96 **Q**. On the 1st May, 1895, a soldier is awarded ten days' D. For breaking a window of a cell in which he is confined, he is punished by a further award of 168 hours' D. on the 5th May. On what date does the punishment expire?

A. 12th May. **R. 6; K. 494.**

.C.08 **Q**. Private A., who is a defaulter with 7 days' C.B. unexpired, is for a fresh offence awarded 48 hours' D. Explain how the punishment takes effect.

A. The soldier would be put in the detention room at the usual hour, and the two punishments would run concurrently for two days. At the expiration of the detention the remainder of the C.B. would be completed. **R. 6; K. 494.**

Q. On 1st October A. and B. are awarded 7 days' C.B. On 5th October A. is given 8 days' D., and B. 7 days' C.B. Give the date on which each man's second award ceases. **E.C.10**

A. A. 12th October:
B. 14th October. **R**. 6; **K**. 494.

Q. On the 1st November Private A. is awarded 96 hours' detention and 10 days' C.B. On 7th November he is again awarded 96 hours' detention and 7 days' C.B. When will the detention and C.B. finish respectively. **P.L.07**

A. On the afternoon of 7th November (say 2 p.m.), the soldier is put in the detention rooms, and released at 2 p.m. on the 11th November. The first sentence of C.B. expires at midnight on the 14th November, when the second sentence of C.B. begins to run, and therefore terminates on the 21st. **R**. 5; **K**. 494.

SECTION VII.

JURISDICTION OF COURTS-MARTIAL.

S.E. 06 **Q**. State the law as to the trial by court-martial at any one place, of an offence committed at another part of His Majesty's dominions.

A. An offence, irrespective of the place of commission, can be tried anywhere within the jurisdiction of an officer authorized to convene general courts-martial. **S 159.**

C. 08 **Q**. Explain briefly the main differences between regimental, district, and general courts-martial as regards their powers of punishment and jurisdiction.

A. A R.C.-M. cannot award a heavier punishment than 42 days' D., and cannot discharge with ignominy. It cannot try an officer, a warrant officer, or a person subject to military law who does not belong to H.M. forces. A D.C.-M. cannot award a punishment exceeding 2 years' hard labour. It can only sentence a warrant officer to the punishment laid down in S. 182, and cannot try an officer. A G.C.-M. alone can award the punishments of death and penal servitude, and can try an officer. **S. 44, 47, 48.**

S.E. 10 **Q**. Give an illustration of (1) a court-martial; (2) an individual "acting without jurisdiction."

A. (1) A court will act without jurisdiction if not properly constituted, *e.g.*, if the president is not of the proper rank or has not been properly appointed.

(2) A C.O. dealing with a person not subject to military law, or summarily punishing a warrant officer, would act without jurisdiction.

Q. Give a brief précis of the laws and regulations as to the assembly of courts-martial on board H.M. ships and ordinary transports. S. 02

A. 1. On board of any of H.M. ships, the captain may, by an order in writing, authorize the C.O. of the troops to convene a regimental court-martial for the trial of a N.-C. officer.

In order to try a soldier by court-martial, he must be disembarked at the first opportunity for the purpose of being proceeded against according to military law.

2. On board any hired transport the soldier carries with him the law to which he was subject at the port of embarkation, and the C.O. of the troops can always convene a regimental court-martial, and may convene the higher courts if he has a warrant to do so.

Any finding and sentence, so far as not confirmed and executed on board ship, may be confirmed and executed at the port of disembarkation, as if the trial had been held at that place. **S. 188; M. 605.**

Q. Give a brief summary of the regulations respecting the discipline of troops on any of His Majesty's ships. **E.C. 90**

A. 1. The discipline of all on board is under the control of the captain, but the troops are to be left to the management of their own officers as far as may be consistent with the order and discipline of the ship.

2. The captain may order an offender to be placed in either naval or military custody, but when an offender is to be disembarked for trial by military authority he must be placed in military custody.

3. The captain may, by an order in writing, authorize the C.O. of the troops to convene a regimental court-martial for the trial of a N.-C. officer.

4. If an offence can only be adequately dealt with by a general or district court-martial, the offender shall, with the concurrence of the captain, be disembarked at the first opportunity for the purpose of being proceeded against according to military law.

5. If a private soldier commits an offence that requires the infliction of a summary punishment, the captain (with the concurrence of the C.O. of the troops) may sentence him to a punishment authorized in the summary punishment table (not exceeding 42 days' H.L.)

The C.O. of the troops may award in less grave cases the authorized minor summary punishments. **M. 605.**

C.93 **Q**. Explain how serious offences against military discipline are punished when committed on board of His Majesty's troopships.

A. The offender may be—

(*a*) Sentenced to a punishment not exceeding 42 days' H.L. by the captain, or awarded an authorized minor punishment by the C.O. of the troops (if a private soldier).

(*b*) Tried by regimental court-martial (if a N.-C. officer).

(*c*) In other cases, the offender would be taken into custody and disembarked at the first opportunity, in order that he may be brought before a district or general court-martial.

M. 605.

P.C.10 **Q**. You are (as a captain) the senior combatant officer on board a hired transport. What powers are vested in you for the maintenance of discipline?

A. The C.O. of the troops on board a ship not in commission can always deal with the offender summarily or by convening a regimental court-martial. He may convene the higher courts if he holds a warrant to do so. The soldier, in fact, carries with him the military law to which he was subject at the time he embarked, and in so far as any finding or sentence of a court-martial is not confirmed and executed on board ship, it may be confirmed and executed at the port of disembarkation as if the trial had been held at that place. **S. 47, 188.**

Q. On board the hired transport "Assaye" a soldier commits a violent assault on a N.-C. officer. State what course you can adopt as a C.O. with regard to him. **P.C. 03**

A. 1. Dispose of the case summarily or by regimental court-martial.

2. Convene a district court-martial (if you have power to do so), and (if you have not power to confirm) delay the execution of the sentence until arrival at the port of disembarkation, when it can be confirmed by competent authority.

3. Disembark the offender at the first opportunity for trial by district court-martial. **S. 47, 188.**

Q. A sergeant on board one of His Majesty's troopships commits a serious offence. Can he be tried on board the ship? Quote the apparently contradictory regulations on the subject, and give your decision, with the reasons for making it. **P.L. 92**

A. "If *any N.-C. officer* shall commit an offence which, in the opinion of the captain and C.O. of the troops, does not require trial by general or district court-martial, the captain may, by an order in writing, authorize the C.O. of the troops to convene a regimental court-martial for the trial of such N.-C. officer."

"A N.-C. officer of higher rank than corporal is not to be tried by any court-martial inferior to a D.C.-M., except when a D.C.-M. cannot, having due regard for the public service, be assembled; of these circumstances the sole judge will be the officer having power to convene a D.C.-M. to try the case."

Decision. — The sergeant can be tried on board the ship by regimental court-martial.

Reasons.—C.O's. on board His Majesty's ships are enjoined to be guided in all matters relating to the exercise of their command by an Order in Council which no King's Regulation can overrule. Moreover, the second regulation quoted evidently only refers to courts-martial held on land. **M.** 606; **K.** 438.

P.L.01 **Q**. When does a soldier of the land forces become subject to the provisions of the Naval Discipline Act?

A. When on board one of H.M. ships in commission. **S.** 186; **M.** 605.

S.E.91 **Q**. A N.-C. officer on board one of His Majesty's ships in commission is, with the concurrence of the captain of the ship, tried by regimental court-martial, convicted and sentenced. May or may not the captain withhold the execution of the sentence? If so, what is the result?

A. 1. The captain may withhold the order directing the sentence to be carried into effect.

2. The confirming officer shall suspend the execution of the sentence until the disembarkation of the soldier. **M.** 606.

P.C.09 **Q**. State fully the law as to the time within which persons who have committed offences under the Army Act may be tried and punished.

A. No person can be tried for an offence if *three years* have passed since its commission, and if the offender has ceased to be subject to military law, the trial must take place within *three months* of the date of his ceasing to be so subject.

Exceptional cases.—Desertion on active service and mutiny can be tried at any time.

Desertion (not on active service) and fraudulent enlistment can also always be tried unless a man has served continuously in an *exemplary* manner for *three years* since the commission of the offence. **S.** 158, 161.

Q. Give your reasons for considering the following liable or otherwise to trial by court-martial. **P.C.05**

Sergeant A. discharged 10th January, 1902. On 3rd May, 1902, it was found that stores that were under his charge are deficient.'

Private C. deserted and made away with kit on 10th April, 1902. Arrested on 26th June, 1905.

Private D. sentenced to imprisonment and discharge with ignominy. A serious offence prior to the sentence is brought to light.

A. 1. Sergeant A., more than three months since discharge, can be tried by a civil court but not by a military one.

2. Private C. can be tried for desertion, but not in respect of kit, as it is over three years.

3. Private D. is subject to the Army Act during the term of his sentence. **S. 158, 161.**

Q. Can a soldier be tried by court-martial at Gibraltar for an offence which he committed six months previously in India **P.C.03**

A. Yes. It is within the three years' limit of time and an offence, irrespective of place, can be tried anywhere within the jurisdiction of an officer authorized to convene general courts-martial. **S. 159, 161.**

Q. There are not sufficient officers at a station in the Western Command to form a court for a soldier's trial. It is decided to remove the soldier to Aldershot for trial. **C. 10**

(1) Can this be done?

(2) What steps should be taken?

(3) Under whose orders should the court be convened?

A. (1) Yes, provided the accused is not likely thereby to be prejudiced in his defence.

(2) Apply to G.O.C.-in-Chief Western Command.

(3) G.O.C.-in-Chief Aldershot Command.

S. 159; K. 570.

C. 08 **Q**. A soldier, on completion of his service with the Colours, passes into the Army Reserve. To what extent is he still liable to trial and punishment for an offence committed while he was serving with the Regular Forces?

A. 1. For desertion on active service and mutiny the offender can be tried at any time.

2. For desertion (not on active service) and fraudulent enlistment the offender can also always be tried, unless he has served continuously in an exemplary manner for three years since the commission of the offence.

3. In all other cases the trial must take place within three months of the date of the offender ceasing to be subject to military law.

S. 158, 161.

P.L.08 **Q**. A soldier is transferred to the Army Reserve on 1st March, 1907. On 20th July evidence proves him guilty of the theft of £20 from the canteen in 1906.

A. As more than three months has elapsed since the man left the colours he cannot be tried by a court-martial. He would be charged with the theft before a civil court. **S. 158.**

S.E.06 **Q**. Under what circumstances would an officer be obliged to hand over a soldier to a policeman acting under an order of a civil court?

A. 1. On a charge or conviction for crime.

2. For a debt, damages, or money exceeding £30.

3. In the case of a master claiming an apprentice.

4. In the case of a claim by a parish for wife desertion. **S. 96, 97. 144; K. 390 (7).**

C 06 **Q**. State the regulations as to the trial by court-martial of civil offences when committed by persons subject to military law.

A. A person subject to military law can be tried by court-martial for any civil offence, whether committed in England or elsewhere, with the exception, that if the offence be treason, treason-felony, murder, manslaughter, or rape, it cannot be tried by court-martial if it is committed—

1. In the United Kingdom, or,
2. In any place in His Majesty's dominions (other than Gibraltar) which is less than 100 miles in a straight line from some city or town, where it might be tried by a competent civil court, *unless the offender is on active service.*
3. At the same time, the fact that such offences are triable by court-martial will not oust the jurisdiction of ordinary civil courts over them. (A field general court-martial can try any offence committed on active service, but when troops are not on active service it can only be convened for the trial of offences against the property or person of some inhabitant of, or residents in, the country.)

S. 41, 49.

Q. Can a regimental court-martial try a civil offence? **C. 07**

A. Subject to the limitations laid down as to the five crimes of treason, treason-felony, murder, manslaughter, and rape, a court-martial can try any civil offence. Minor civil offences, which a C.O. could summarily punish, might be dealt with by a regimental court-martial, but if charged under S. 41 of the Army Act, permission for trial by regimental court-martial must be obtained by the C.O. from superior authority.

S. 41; K. 487.

Q. Why are regimental courts-martial less generally assembled now than formerly? Give three examples of cases that might be brought before a regimental court-martial. **S.E. 09**

A. 1. Owing to the increased powers of summary award by a C.O., it is laid down that, for cases not summarily disposed of, a district court-martial should as a rule be convened.

2. In exceptional cases, owing to the absence of a convening authority for a higher court, *e.g.*, on board ship, on the line of march, or in the case of isolated detachments. **S. 47; R. 16.**

P.C.00 **Q.** Give the authority for the statement that a regimental court-martial cannot try a civil offence under S. 41 without special permission.

A. K. 487.

S.E.06 **Q.** At autumn manœuvres in England an unpopular officer is killed by a bullet fired by one of his men. How would the case be dealt with?

A. The offender will be handed over to the civil power for the case to be investigated. A remand will be applied for, and a full report will be forwarded, through the G.O.C.-in-chief of the command concerned, to the Treasury solicitor. **K. app. 7; M. 208.**

P.L.93 **Q.** State the various offences for which a soldier in the army reserve is liable to be tried either by a civil or military court.

A. 1. Desertion.
2. Absence without leave.
3. Fraudulent enlistment, or false answer on attestation, or attempt to commit the same.
4. Failing to comply, on two consecutive occasions, with orders in respect of payment of the reserve.
5. Failing to attend at any place when duly ordered.
6. Being insubordinate to a military official who is carrying out the provisions of the Reserve Forces Act.
7. Fraudulently obtaining pay or allowances.
8. Failing to comply with orders issued under Reserve Forces Act. **R.F.A. 6, 15; M.A. 26.**

P.L.01 **Q.** How does the position of a warrant officer differ from that of an ordinary N.-C officer in respect of being tried for an offence by a court-martial?

A. A warrant officer, holding an honorary commission, ranks as an officer, and must be tried by a general court-martial.

A warrant officer (not holding an honorary commission) cannot be tried by a regimental court-martial, and a district court-martial can only award the punishments mentioned in S. 182, and its president must in no case be under the rank of captain. **S. 182.**

Q. Enumerate the special provisions as to the trial and punishment of a N.-C. officer. **E.C.08**

A. He is not to be subjected to summary or minor punishments except admonition, reprimand, or severe reprimand. By his C.O. he can be deprived of acting rank, and in most cases removed from an appointment.

By court-martial he may in addition or without other punishments be sentenced to forfeiture of seniority of rank or reduction to a lower grade or the ranks. A N.-C. officer above the rank of corporal should not be tried by a court inferior to a district court-martial. **S. 183; K. 302, 438, 499.**

Q. "A sergeant should not be tried by a regimental court-martial." Quote the authority. **P.L.05**

A. A N.C. officer of higher rank than corporal is not to be tried by any court-martial inferior to a district court-martial, except when a district court-martial cannot, having due regard for the public service, be assembled.

(A regimental court-martial held on board one of H.M. ships has power to try *any* N.-C. officer.) **K. 438; M. 605.**

Q. "Except when it is important that the guilt or innocence of the accused should be definitely decided, it is undesirable to send a case before a court-martial when it seems doubtful whether evidence will lead to a conviction." Give two cases of a sergeant and a private which should form exceptions. **P.L.04**

A. A Q.M.-Sergeant in charge of stores hears that he is suspected of improperly dealing with them. He wishes to be tried so that the matter may be cleared up by sworn evidence. A soldier is accused by his comrades of indecent conduct under circumstances which make it difficult to refute the accusation. It is desirable that the guilt or innocence of the accused should be definitely decided. **K. 488.**

P.C. 02 **Q.** Can a soldier who has been legally convicted or acquitted by a civil court be tried subsequently for the same offence by a military court? Does the converse apply?

A. An offender who has been acquitted or convicted by a civil court, or a court-martial cannot again be tried by court-martial for the same offence. An acquittal or conviction by a court-martial does not exempt an offender from being tried by a civil court, but in awarding punishment the court shall have regard to the military punishment he may have undergone.

S. 46, 157 162.

S.E. 05 **Q.** What principles govern the arraignment of an accused a second time for the same offence? Give instances where a new trial may be ordered.

A. *Non-confirmation of a conviction* by court-martial enables a man to be tried again, but it is obvious that this course should only exceptionally be adopted, *e.g.*, if the accused had pleaded guilty on his first trial, but it was evident from his defence that he did so under a misconception, or if some irregularity in procedure has caused *injustice to the accused.*

A second trial may be ordered in the following case—

The original court is illegally convened or constituted, or, if legally constituted, has been dissolved by reason of the illness of the accused, the absence of the president, or an insufficiency of members.

A finding of conviction or of insanity, or the over-ruling of a special plea to jurisdiction or in bar of trial is not confirmed.

The proceedings are lost before confirmation, and the authorized substitute for them cannot be obtained.

The revision of the finding is necessary and it is impossible to reassemble the original court.

S. 53. 54. 157; M. 36.

SECTION VIII.

COMPOSITION OF COURTS-MARTIAL.

Q. State the regulations as to the numbers, army service and corps of members of general, district, and regimental courts-martial. **C. 05**

	G.C.M.	D.C.M	R.C.M.
A. Number of members in United Kingdom, India, Malta, and Gibraltar.	9	3	3
Number of members elsewhere	5	3	3
Minimum length of members' service in years.	3	2	1

Corps.—General and district courts-martial must, as far as is practicable, be composed of officers of different corps. A regimental court-martial is usually, but not necessarily, composed of officers of the regiment of the accused, except where detachments of several corps are serving together, *e.g.*, on the march, or on board ship. **S. 47, 48 ; R. 19, 20.**

Q. In order to serve on a court-martial an officer must be *eligible* and not *disqualified*. Explain what this means. **E.C.07**

A. He is eligible when he is subject to military law and possesses the prescribed amount of service.

He is disqualified when he is—

1. The convening officer.
2. The officer who investigated the charges or took down the summary of evidence.
3. The prosecutor.
4. A witness for the prosecution.
5. The C.O. of the accused or of his corps.
6. A member of a court of inquiry respecting the charges, or a company commander who made preliminary enquiry into the case.
7. An officer who has any personal interest in the case. **R. 19.**

P.C.08 **Q**. Can the officer who has taken down a summary of evidence sit as a member of the court before which it is laid?

A. No. **R**. 19.

P.L.95 **Q**. Is a member of a court-martial competent to act as (1) prosecutor, (2) witness for the prosecution, (3) witness for the defence, (4) confirming officer, (5) interpreter?

A. 1 and 2. No.
3. Yes.
4. No, except on a field general court-martial, when delay is not practicable.
5. Yes. **S**. 50; **R**. 19.

C. 93 **Q**. What is the law as to combatant officers of different branches of His Majesty's service sitting together on courts-martial?

A. They can always sit together on a court-martial, provided they are at the time subject to military law.

A general or district court-martial should, as far as practicable, consist of officers of different corps.

For the trial of a soldier belonging to the Special Reserve or Territorial Force, at least one member of the court must belong to that force, and, if practicable, to that particular branch of the force to which the accused belongs. **S**. 50; **R**. 19, 20.

A. 92 **Q**. It is desirable that a district court-martial should be at once assembled at a station in one of our colonies for the trial of Gunner F.G., but there are not a sufficient number of military officers available. One of His Majesty's ships is in harbour, and it is suggested that a marine officer or a naval officer might make up the legal minimum? Can either sit on the court? Give your authority.

A. A naval officer could under no circumstances sit on the court-martial, as he is not subject to military law.

A marine officer borne on the books of one of His Majesty's ships is subject to the Naval Discipline Act, and could not sit on the court-martial, but a marine officer serving on shore and subject to military law could be appointed a member of the court. **S.** 179; **R.** 19.

Q. What is the law as to the rank and service of the members of a court-martial assembled to try a commissioned officer? **S.E.**01

A. 1. *Rank*—

(*a*) Members shall be of equal, if not superior rank, to the prisoner (if available).

(*b*) Five of the members shall not be below the rank of captain.

(*c*) A subaltern can, in no case, sit on a court for the trial of a field officer.

(*d*) When a general officer or colonel is available as president, an officer of inferior rank is not to be appointed.

(*e*) When a C.O. is to be tried, as many members as possible should hold or have held a similar position.

2. *Service*—

Members should have, at least, three years' service. **S.** 48; **R.** 21; **K.** 578.

Q. A general court-martial is assembled at Aldershot for the trial of Major X., Bristol Regiment. **P.L.**05

President.

Major-General A., Commanding 4th Division.

Members.

Colonel B., Commanding, Salisbury Regiment.
Lieut.-Colonel C., Commanding, Bristol Regiment.
Lieut.-Colonel D., Royal Artillery.
Major E., Guildford Regiment.
Major G., Royal Engineers.
Captain H., Reading Regiment.
Lieutenant K., Guildford Regiment.
Waiting Member.—Major L., Salisbury Regiment.
Judge Advocate.—Colonel Z.

Comment on the composition of the above court, pointing out in what respects it is illegal, and in what respects it might be altered with advantage.

A. 1. The court should be composed of at least nine members and only eight are detailed to serve.

2. Lieutenant K (a subaltern) cannot sit on a court for the trial of a field officer.

3. Lieutenant-Colonel C. is *disqualified* for serving on the court as the C.O. of the prisoner's corps.

4. There should be more members (two to four) appointed than the legal minimum.

5. No member of the court should be below the rank of major, if field officers are available (which they would be at Aldershot).

S. 48; R. 19. 21; K. 576.

S.E.96 **Q**. It becomes necessary to convene a general court-martial for the trial of a soldier. How would the convening officer deal with the case if the only officers available to form the court belonged to the same battalion as the accused?

A. He must state in the order convening the court that in his opinion other officers are not (having due regard to the public service) available. **R. 20.**

E.C.05 **Q**. A district court-martial is assembled for the trial of a soldier of the Territorial Force.

President:

Captain T. Anderson, R.A.

Members:

Lieutenant R. Jamieson, 1st Bn. Hampshire Regt.

Lieutenant A. Sandilands, 1st Bn. Yorkshire Regt.

Point out the defects in the composition of the Court.

A. 1. The president should be a field officer if one is available.

2. For a court of three officers, not more than one should be a subaltern.
3. One of the members should be an officer of the Territorial Force. **S. 48; R. 20, 21.**

Q. When may such a court consist entirely of officers of the Regular Forces? **P.L. 11**

A. In the case where the convening officer states in the order convening the court that in his opinion an officer of the Territorial Force is not available. **R. 20.**

Q. In reference to a district court-martial state the numbers, service, and experience of the members and the punishment that can be awarded. C. 02

A. *Numbers.*—Not less than three (in complicated cases, five).

Service.—Not less than two whole years.

Experience.—An officer should have previously attended as a supernumerary at least 25 times, and be, in the opinion of his C.O., competent.

Punishment.—Two years' H.L. or D., discharge with ignominy, in the case of a N.-C. officer forfeiture of seniority of rank or reduction to a lower grade or to the ranks, forfeitures, fines, and stoppages. **S. 44, 48; K. 572, 576.**

Q. What is the composition of a district court-martial, the rank of the president, its jurisdiction and powers? **C. 06**

A. *Composition.*—Not less than three members (in complicated cases five), each of whom must have not less than two years' service. When composed of three members, not more than one is to be a subaltern.

President.—He shall not be under the rank of *field officer* unless, in the opinion of the convening officer, a field officer is not available, in which case a *captain* may be president, and he shall not be under the rank of captain unless, in the opinion of the convening officer, a captain is not available, when a *subaltern* may be appointed president (except for the trial of a warrant officer).

Jurisdiction.—It can try *any person* subject to military law except a person subject to military law as an officer.

It can try *any offence* triable by court-martial, but offences punishable by death or penal servitude should not be disposed of except under the orders of an officer who has power to convene a general court-martial.

Powers.—Subject to the restrictions aforesaid, a district court-martial can award any punishment that a court-martial can award, other than death and penal servitude. **S. 48; K. 576.**

E.C.94 **Q**. What are the regulations that govern the rank of president of the different kinds of courts-martial?

A. 1. The president of a *general* court-martial must be a *general* or *colonel*, if available, otherwise a *field officer*, but when a field officer is not, with due regard to the public service, available, a *captain* may be appointed.

2. The president of a *district* court-martial must be a *field officer*, if available, but if not, a *captain* may be appointed, and if a captain is not, with due regard to the public service, available, a *subaltern* may be appointed.

3. The president of a *regimental* court-martial must not be under the rank of *captain*, except on the line of march, on board ship, or when a captain is, with due regard to the public service, not available.

S. 47, 48; K. 558, 578.

E.C.95 **Q**. Describe the circumstances under which a major might sit as president of a court, of which a lieutenant-colonel was a member.

A. 1. A court-martial is assembled with a major for a president. In the course of the trial one of the members is promoted to lieutenant-colonel. The officer promoted will sit and vote as the senior member of the court, but cannot replace the president, who has been personally appointed by order of the convening officer.

2. When a court-martial consists of officers of one regiment, the president would be appointed, and the members would sit in accordance with regimental rank. Hence, in a regimental court-martial, a major might be president, while a captain and brevet lieutenant-colonel might be a member. **R.** **58.**

Q. Of what courts and under what circumstances can a subaltern be appointed president? **C. 92**

A. 1. District, regimental and field general courts-martial.

2. He might be appointed president of a *district* court-martial (except for the trial of a warrant officer) when in the opinion of the convening officer neither a field officer nor captain is available, and when the case cannot conveniently be referred to superior authority. He might be appointed president of a *field general* court-martial when, in the opinion of the convening officer, a captain or officer of higher rank is not available. He might be appointed president of a *regimental* court-martial on the line of march, on board any ship, or when, in the opinion of the convening officer, a captain is not available. **S.** **47, 48, 49.**

Q. Explain clearly the conditions under which a non-combatant officer can be called upon to act as (1) president, (2) member of a court-martial. **S.E. 92**

A. A departmental officer serving in his department, whether on his combatant or other commission, is not *entitled* to the presidency of courts-martial, but still he is legally qualified if duly appointed. In practice, however, a combatant officer is always appointed president of a court-martial on which any combatant officer sits as a member. A departmental officer can, however, preside over a regimental court composed of officers belonging to the same department. There is no regulation preventing a non-combatant officer from sitting on a court-martial as a member. **K.** 229; **M.** 37.

A. 90 **Q.** What are the duties of the president of a court-martial?

A. 1. He is responsible for the trial being conducted in accordance with the Army Act, and in a manner befitting a court of justice. **R.** 59.

2. The charge sheet is sent to him before the court meets, and if any amendment appears to him to be required, he should communicate with the convening officer before the trial begins. **R.** 17.

3. It is his duty to see that justice is administered and that the accused has a fair trial, and that he does not suffer any disadvantage through ignorance, or incapacity to examine witnesses or to make his own evidence intelligible. **R.** 59.

4. In the absence of a judge advocate, he swears in the court, and is responsible for the accuracy of the record of the proceedings and for their safe custody and transmission to proper authority. **R.** 27, 95, 97.

5. He must date and sign the proceedings when completed and initial any alterations made. **R.** 50.

6. During the trial he should, like the judge in a civil court, act as counsel for the accused if undefended, and will therefore, if necessary, cause witnesses to be called, and will put to them (and to the accused, if he gives evidence) any questions which appear to him necessary to elicit the truth. He will examine the summary of evidence, and if a witness gives

different evidence from what is there stated, will question him as to the difference. He will usually read to the court any statement (but not the evidence) of the accused contained in the summary of evidence. All interpolated or extra questions to witnesses must be put through the president.
R. 50, 85 86.

7. After the assembly of the court he will take steps to secure the attendance of any witnesses that may be wanted, and whose attendances can reasonably be procured. **R.** 78.
8. In the case of an equality of votes on the sentence or any question arising after the commencement of the trial *except the finding*, the president has a second or casting vote.
S. 53 ; **R.** 43, 69.

Q. In what respect does the position of president of a court-martial differ from that of an ordinary member? **E.C.05**

A. 1. He is responsible for the procedure at the trial and signs the proceedings.
2. He is the senior officer, and is appointed by name as president of the court.
R. 17, 50, 59.

Q. The original charge-sheet and the summary of evidence are sent to the president of a court-martial before the trial commences. Explain the object of this. **S.E 96**

A. To give him a general knowledge of the case, and enable him to communicate with the convening officer if he thinks the charges require amendment. **R.** 17.

Q. A summary of evidence is laid before a court-martial on its assembly. Describe the uses to which it may be put— **E.C.98**
1. When the accused pleads "not guilty."
2. When the accused pleads "guilty."

A. 1. It may be used for the purpose of showing that a witness has contradicted himself or has made a particular statement; and during a trial the president should compare the evidence given by each witness with his statement contained in the summary of evidence, and if there is any material variance, should question the witness respecting the variance.

Any statement (but not the evidence) of the accused contained in the summary of evidence (being in the nature of a voluntary confession) is usually read to the court as evidence, whether it is in favour of or against him.

(The summary of evidence cannot otherwise be used as evidence. It must not be read or referred to by the court in so far as it relates to a witness who is not present, and it is usually expedient that no one but the president should refer to it.)

2. In the case of the accused pleading guilty to all the charges there is no regular trial, and the summary of evidence is read and attached to the proceedings to enable the court to determine the sentence, and to acquaint the confirming officer with the case. **R 17. 37**.

C. 04 **Q**. The nature or composition of a court-martial is in some cases affected by the status of the accused. Point out to what extent this is the case where courts-martial are convened respectively for the trial of (1) a C.O., (2) a warrant officer, (3) a sergeant, (4) a soldier of the Territorial Force, (5) a camp follower.

A. 1. A C.O. must be tried by a general court-martial, and as many members as possible should hold or have held an equivalent position. **S. 48; K. 578**.

2. A warrant officer must be tried by a general or district court-martial, and the president of the court must not be under the rank of captain. **S. 182**.

3. A sergeant is not (if practicable) to be tried by a court-martial inferior in degree to a district court-martial, except on board His Majesty's ships. **K. 438.**
4. For the trial of a man of the Territorial Force at least one member of the court should be an officer of that force. **R. 20.**
5. A camp follower cannot be tried by a court-martial inferior in degree to a district court-martial. **S. 184.**

Q. How would the nature or composition of a court-martial be affected by the fact that the accused was (1) a field officer, (2) a subaltern. **S.E. 06**

A. Both these officers would be tried by a general court-martial composed of members of an equal, if not, superior, rank. In no case must an officer below the rank of captain be a member of a court to try a field officer. For the trial of a subaltern not more than two officers of subaltern rank should be detailed as members of the court. **S. 48; R. 21.**

Q. How would the court be affected by the fact that the accused was a private on board a transport? **E.C. 10**

A. The C.O. of the troops can always convene a regimental court-martial, and may convene the higher courts if he holds a warrant to do so. **S. 47, 188.**

SECTION IX.

THE PROSECUTOR AND JUDGE-ADVOCATE.

E.C. 05 **Q.** Give a brief explanation of the position and duties of a prosecutor at a court-martial.

A. He is appointed by the convening officer, and cannot be objected to, as he does not form part of the court. He is frequently called upon to warn the accused for trial, and prove previous convictions prior to the sentence. He has to call witnesses to prove the charges by sworn evidence, and must impartially assist the court at arriving at the true facts of the case. He examines his own witnesses and cross-examines those of the accused. He informs the court if the accused has elected trial, and brings out in evidence any material points in connection with the charge.

He must not comment on the fact that the accused has not given evidence himself, but may point out that he did not do so until after other witnesses.

R. 14, 15, 24, 25, 39 40, 41, 46, 60 ; App. 2 ; K. 573.

C. 06 **Q.** Can the prosecutor comment on the fact of the accused either giving evidence himself or not giving it?

A. See above—last answer. **R. 40.**

P L.03 **Q.** Who appoints the prosecutor at a court-martial?

A. 1. The convening officer. **R. 24.**

C. 07 **Q.** Can the accused object to the prosecutor?

2. No; as he is not a member of the court. **R. 25.**

P C. 07 **Q.** Is it necessary that a prosecutor at a court-martial should be sworn?

A. No; unless he has to give evidence as a witness or, after the finding, to give evidence as to previous convictions. **R. 39.**

Q. Can the prosecutor be called upon to give evidence as a witness? **P.C.06**

A. Yes. It is very undesirable that a prosecutor should be called as a witness for the prosecution even to prove a date or other formal matter. If it should be necessary on active service for him to give evidence for the prosecution, he should be examined as the first witness, and his sworn statements as a witness should be kept quite distinct from his statements as prosecutor.

He may be called upon to give evidence for the defence.

(When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined like any other witness.) **R. 39, 89.**

Q. Can the prosecutor remain present when the court is cleared? **P.C.07**

A. No. He is not a member of the court. **R 63.**

Q. How does he obtain a knowledge of the case to be tried sufficient to conduct the prosecution? **P.C.08**

A. From the charge sheet and summary of evidence to which he has access. Copies are usually furnished to him. **M. 31.**

Q. May the prosecutor cross-examine the accused when the latter elects to himself give evidence? **P.C.07**

A. Yes, but must not ask questions tending to show that the accused has been guilty of an offence other than that with which he is charged, or is of bad character, except under the circumstances laid down in R. 80.

Q. In what cases is a person appointed to act as judge-advocate at a court-martial? What officers are disqualified to act as judge-advocates? **E.C.95**

A. 1. A fit person *shall*, in the case of a general court-martial, and *may*, in the case of a district court-martial, be appointed to act as judge-advocate at such court-martial.

2. An officer who is disqualified for sitting on a court-martial shall be disqualified for acting as judge-advocate at the court-martial. **R. 101.**

P.L.09 **Q**. Specify in what circumstances an officer would be disqualified from acting as judge-advocate at a court-martial

A. He must not be—

1. The convening officer.
2. The prosecutor or a witness of the prosecution.
3. The officer who investigated the charges before trial or took down the summary of evidence.
4. A member of a court of inquiry respecting the matters on which the charges are founded.
5. The commanding officer of the accused or of his corps.
6. An officer who has a personal interest in the case. **R**. 19, 101.

P.C.93 **Q**. State the powers and duties of a judge-advocate at a court-martial.

A. *Powers and duties*—

1. At a court-martial he represents the judge-advocate-general, and in fulfilling his duties must maintain an entirely impartial position.
2. The prosecutor and the accused are entitled to his opinion on any questions of law.
3. He is responsible for informing the court of any informality or irregularity in the constitution of the court, the charge, and the proceedings, and will give his advice on any matter before the court. Any information or advice given to the court will, if he or they desire it, be entered on the proceedings.
4. He swears in the court and witnesses, and has the power of summoning witnesses not subject to military law.
5. The judge-advocate has, equally with the president, the duty of taking care that the accused does not suffer in consequence of his ignorance or incapacity; and may, for that purpose, with the permission of the court, call witnesses or put questions to witnesses.

6. He is responsible for the record and custody of the proceedings.
7. At the conclusion of the case, he will, unless he and the court think it unnecessary, sum up in open court, the whole case. **R.** 103.

Q. Who is the judge-advocate at a court-martial, and by whom is he appointed? S.E. 06

A. A fit person (usually an officer) who represents the judge-advocate-general at all general courts-martial and (in exceptional cases) at district courts-martial.

In the United Kingdom he is appointed by the judge-advocate-general; abroad by a convening officer who has power by warrant to do so. **R.** 101.

Q. State the extent to which a judge-advocate and prosecutor may comment on the accused giving evidence himself. S.E. 03

A. There are no restrictions as to a judge-advocate, but a prosecutor must not comment on the fact that the accused did not elect to give evidence himself, though he may point out that he did not do so until after other witnesses for the defence. **R.** 39, 42.

Q. Is a judge-advocate liable for the legality of the proceedings of the court to which he is appointed? S.E. 06

A. No. The court are responsible for the legality of their decisions, but should never disregard the advice of the judge-advocate on any legal point. **R.** 103.

Q. Can a court-martial proceed in the temporary absence of the judge-advocate? S.E 06

A. No. The court shall adjourn, and the president shall report the circumstances to the convening authority. Another judge-advocate may be appointed by the proper authority, who shall be sworn and act as judge-advocate for the residue of the trial. **R.** 102.

SECTION X.

ASSEMBLY OF COURTS-MARTIAL.

S.E. 02 **Q**. Enumerate the documents which are forwarded to a convening officer when an application is made for the assembly of a court-martial.

A. *Documents*:—

1. Charge Sheet (in duplicate)
2. Summary of evidence.
3. Troop, battery, or company conduct sheet.
4. List of witnesses for the prosecution and defence.
5. Statement as to the character and particulars of service.

Disposal of above:—

1. One copy to be sent to the president; one copy to be filed, with the application for trial.
2. To be sent to the president.
3. To be returned to the corps with notice of trial.
4. To be returned to the corps with notice of trial.
5. To be returned to the corps with notice of trial. **M. 604.**

P.C.07 **Q**. A Commanding Officer remands an accused for trial by district court-martial. How is a full knowledge of all necessary details concerning the case conveyed to the convening officer and the accused.

A. By forwarding to the convening officer the documents mentioned in last answer.

See answer later on as to *warning* of accused.

R. 13, 14, 15.

P.L 10 **Q**. A C.O., having investigated a charge and remanded the accused for trial by D.C.M., finds himself in the position of convening officer. What procedure should he adopt?

A. He cannot convene the court himself, but must refer to a superior to do so. **R.** 17.

Q. By whom are the different kinds of courts-martial convened, and from what sources do the convening officers derive their authority. **E.C. 01**

A. A *general* court-martial shall be convened by His Majesty or some officer deriving authority to convene a general court-martial from a warrant issued under the sign manual of His Majesty, and signed by the Secretary of State.

A *district* court-martial shall be convened by an officer authorized to convene general courts-martial, or some officer deriving authority to convene a district court-martial from a warrant issued by an officer empowered to convene general courts-martial.

A *regimental* court-martial can be convened by any officer authorized to convene the higher courts; by any commanding officer not below the rank of captain, by any officer in command of two or more detachments, provided he be not under the rank of captain; and on board ship by a C.O. of any rank. No warrant required. **S.** 47. 48, 122. 123; **K.** 559.

Q. What officers are empowered to convene regimental courts-martial? **E.C.09**

A. See last answer.

Q. By virtue of what authority is a regimental court-martial convened? Why is it now seldom assembled? **C. 07**

A. S. 47 of Army Act. A C.O. has now ample powers of summary award, and it is laid down that, for cases not summarily disposed of, a D.C.M. should, as a rule, be convened. **R.** 16.

Q. Supposing that it were necessary to try two Marines at Chatham—the first for a very grave offence, by general court-martial, and the second by district court-martial—by whose authority would each be assembled? **S. 92**

A. 1. A *general* court-martial must be convened by an officer authorized to do so by a warrant from the Admiralty.

2. A *district* court-martial would be convened by the general officer commanding at Chatham.

S. 48, 179.

S.E.98 **Q**. Describe the procedure at a general court-martial when the following case arises. The accused challenges the jurisdiction of the court on the ground that he is a Marine.

A. A reference to the order convening the court would show if there were grounds for the objection. Wherever possible the court must be convened by an officer authorized by warrant from the Admiralty. In case of doubt adjourn and refer to the convening officer.

S. 179.

S. 93 **Q**. A general officer commanding requests his staff officer to bring to the notice of a court-martial, that is about to assemble, the prevalence in the district of the particular crime the court-martial is about to deal with.

A. When a crime is unusually prevalent in a district or garrison, attention should be drawn to the fact periodically in local orders. The prosecutor may be instructed to produce to the court a certified copy of the order during the "proceedings on conviction."

The fact that the general officer is of opinion that an unusually severe punishment is required in a particular case is best signified by assembling a general court-martial for its trial. **M**. 576.

P.L.11 **Q**. Specify the points upon which a convening officer is to satisfy himself before convening a court-martial.

A. That the charges are for offences under the Army Act and are properly framed.

That the evidence forthcoming justifies a trial on these charges.

That the case is a proper one to be tried by the description of court he proposes to convene. **R**. 17.

Q. With what object is the original charge-sheet and summary of evidence sent to the president of a court-martial. P.C. 05

A. So that he may have a general knowledge of the cases about to be tried. If any amendment in the charges appears necessary, he should communicate with the convening officer before the trial begins. The charge-sheet, if found correct, is annexed to the proceedings. **R**. 17.

Q. State the period of time which should elapse between the warning of an accused person for trial and his arraignment before (1) a regimental court-martial, (2) any other court-martial. C. 09

A. (1) 18 hours.
(2) 24 hours. **R**. 14.

Q. Describe in full detail the warning of a soldier for trial by district court-martial. P.L 02

A. Not less than 24 hours before the assembly of the court, the soldier is—

1. Informed by an officer of every charge on which he is to be tried, and the charges are fully explained to him, if necessary. **R**. 14.
2. Asked for the names of his witnesses, in order that steps may be taken to secure their attendance. **R**. 14 78.
3. Given a copy of the charge sheet. **R**. 14.
4. Given a list of the officers composing the court (if he desires it). **R**. 14.
5. Given a copy of the summary of evidence.

(In the case of joint trials he must be given notice in order that he may claim a separate trial if he wishes to call the other accused as witnesses. Each accused should also be told that, if he gives evidence himself, and in doing so gives evidence against any of the other soldiers charged with the same offence, he will be liable to be cross-examined as to character.) **R**. 14, 15, 80.

E.C.09 **Q**. What opportunity of preparing his defence is to be afforded an accused person for whose trial a court-martial has been ordered to assemble?

A. He is given copies of the charge-sheet and summary of evidence, and may—

1. Arrange for counsel, or a commissioned officer, who has the rights of counsel, to appear on his behalf; or
2. Have a person to assist him, whether a legal adviser or any other person; and in any case
3. Have free communication with his advisers and with his witnesses. **R**. 13, 87, 88.

C. 92 **Q**. What are the hours during which courts-martial are ordinarily to sit at various stations at home and abroad? State what is essentially necessary to be observed with regard to the accused on the morning of each day the court is ordered to sit.

A. In the United Kingdom courts will usually be held between 10 a.m. and 4 p.m., or 11 a.m. and 5 p.m. The hours at which courts-martial are to sit at stations abroad will be regulated by general officers commanding A court can sit for a period not exceeding eight hours in any day (except Sunday, Christmas-day or Good Friday), between the hours of 6 a.m. and 6 p.m. In cases of emergency, a court can sit at any hour on any day.

Soldiers ordered for trial are to be examined by a medical officer on the morning of each day the court is ordered to sit, and C.O.'s will be held responsible that no soldier is brought before a court-martial if, in the opinion of the medical officer, he is unfit to undergo his trial. **R**. 64; **K**. 580.

C. 10 **Q**. A court-martial having assembled, what steps should they take to satisfy themselves that the court is legally constituted?

A. The court must satisfy themselves—

That it is properly convened.

That the officers, appointed or detailed, are present and sufficient in number.

That the members are eligible, of the proper rank and corps, and are not disqualified.

That the president is duly appointed, and of the proper rank.

That the judge-advocate, if any, is duly appointed, and is not disqualified. **R. 22.**

Q. On what points as regards the charges about to be brought before them, should courts-martial satisfy themselves before the commencement of the trial. **P.L. 08**

A. They satisfy themselves in respect of each charge—

That it appears to be laid against a person amenable to military law and the jurisdiction of the court.

That the charge discloses an offence under the Army Act, is framed in accordance with the Rules of Procedure, and is sufficiently explicit to enable the accused readily to understand what he has to answer. **R. 23.**

Q. Give two examples to illustrate the fact, that a person may be subject to military law and not be amenable to a particular court-martial. **S.E. 03**

A. 1. A field officer could not be tried by a court on which a subaltern was a member.

2. A warrant officer could not be tried by a regimental court-martial. **S. 48, 182; R. 22.**

Q. Describe shortly the several stages in the investigation of the offence of a soldier up to the assembly of a district court-martial for his trial. **P.L. 03**

A. 1. The offence is investigated without delay (usually the next morning) by the officer commanding the company, and afterwards by the C.O. **R. 2, 3; K. 484, 485.**

2. The summary of evidence will be taken and the C.O., after considering it, will, if he thinks fit, remand the accused for trial by court-martial. **R. 4, 5.**
3. The C.O. either convenes a regimental court-martial or applies to a superior for a general or district court-martial (within 36 hours). **R. 5.**
4. The prisoner is *warned for trial* at least 18 hours before the assembly of a regimental court-martial, and 24 hours in the case of any other court-martial. **R. 14.**
5. On the morning of the day of trial the accused is medically examined as to his fitness to undergo trial and punishment. **K. 580.**
6. The accused is brought before the court under escort.
7. The accused is afforded opportunity to challenge the members of the court. **R. 25; M. 561.**

SECTION XI.

CHALLENGES AND ARRAIGNMENT.

Q. At what stage in the proceedings is the accused first formally brought before the court? Describe the subsequent procedure of the court up to the arraignment. **C. 97**

A. 1. After the court have satisfied themselves, as provided by the Rules of Procedure 22 and 23, that they are legally competent to try the accused and the charge.

2. The names of the president and members are read over and the accused is asked if he objects to any of them.

The challenge, if made, is disposed of.

The court is sworn.

The witnesses, other than the prosecutor and the accused, are ordered out of court.

The charge-sheet is signed by the president, and annexed to the proceedings.

If the accused has elected to be tried, the prosecutor informs the court of the fact.

The accused is arraigned.

S. 51; R. 25, 26, 31, 81; M. 563.

Q. When the accused is first brought before a court-martial, what questions are asked him in order to ensure that he shall have no reasonable ground of objection to any of the officers that compose the court? Can the accused call witnesses in support of his objection? **E.C. 97**

A. 1. The names of the president and members of the court are read over in the hearing of the accused, and they severally answer to their names. The president then says: "Do you object to be tried by me as president, or by any of the officers whose names you have heard read over?" The accused shall state the names of all the officers to whom he objects before any objection is disposed of.

If the president is objected to, that objection will be dealt with first, otherwise an objection to the junior officer will be disposed of first.

2. Yes, and he may give evidence himself. As the court is not yet sworn, no oath can be administered to witnesses. **S.** 51; **R.** 25; **M.** 562.

E.C.01 **Q**. When the accused is brought before a court-martial he states that he objects to the president and one of the members of the court? How are these objections dealt with?

A. A challenge of the president must be dealt with first. The objection, if allowed by one-third or more of the other officers appointed to form the court, shall be allowed, and the court shall be adjourned for the appointment of another president or the convening of a new court.

After the objection to the president has been disposed of, the case of each member objected to is taken separately, the junior being taken first.

An objection to a member is allowed if one-half of the votes of the other officers present are in favour of it.

If the objection to a member is allowed he must retire, and the officer in waiting takes his place; any new appointment can, of course, be challenged by the prisoner. **S.** 51; **R.** 25; **M.** 562.

P.C.09 **Q**. The accused, on being asked by the President whether he objects to be tried by him or any of the officers appointed, replies, "I object to the whole court." Explain what action should be taken.

A. The accused cannot object to the court collectively, but must make each objection separately. If he

persists in objecting to the court collectively, the court should treat the objection as made to each member individually, and deal with such objections in the usual way.
R. 25.

Q. At a court-martial, to whom may the accused object and for what causes. To whom may he not object, and why not? P.L. 04

A. 1. To the president or any member of the court.
2. On the grounds of enmity, prejudice, malice, personal interest, or for having formed and expressed an opinion of the case.
3. He cannot object to the prosecutor or judge-advocate, as they do not form part of the court. **R.** 19, 25

(An objection to a member on the ground that he is not qualified to sit on the court should be allowed, although it might be raised subsequently on a special plea to the jurisdiction of the court.)

Q. An accused objects to a member on the ground that he is an officer of his company. How would the Court deal with the case? C. 07

A. The accused would be asked his grounds for the objection, and the matter would be considered by the court, and the objection will be upheld, if supported by the votes of one half of the other officers present, *i.e.*, —other than the officer to whom the objection is made.
R. 19, 25.

Q. Point out the several obligations to which the members of a court-martial pledge themselves when they take the oath. E.C. 00

A. (*a*) To try the prisoner *according to the evidence.*
(*b*) To administer justice *according to the Army Act,* without partiality, favour or affection.
(*c*) Not to divulge the sentence of the court until it is *duly confirmed.*
(*d*) Not to disclose or discover the vote or opinion of any member, unless required to do so in due course of law. **R.** 28.

P.C.08 **Q**. Private A has elected to be tried, instead of submitting to a summary award. Private B is to be tried for an offence, the prevalence of which has been brought to notice in local orders. How would the above facts be brought to the notice of the courts.

A. 1. The prosecutor informs the court just before the arraignment of the accused, and the fact is noted in red ink at the top of the charge-sheet.

2. The prosecutor, at the time of the "proceedings on conviction," must produce a certificed copy of the local order, and the copy should be attached to the proceedings. **M 563, 576, 583**

C. 95 **Q**. What is meant by arraignment? What are the regulations that ensure that the accused has sufficient time before his arraignment to prepare his defence?

A. 1. *Arraignment* consists in the judge-advocate, or, if there is none, the president or some member of the court reading each charge to the accused and asking him if he is guilty or not guilty of the charge.

2. The interval between the warning of the soldier for trial and his arraignment should not be less, in the case of a regimental court-martial, than 18, and in the case of any other court-martial, than 24 hours.

R. 14, 31; M. 43, 563.

P.L. 05 **Q**. The form of proceedings of courts-martial deal with the case of a single soldier. What difference in general procedure arises when several soldiers are to be tried separately?

A. All the accused are brought up together. Proceedings as to challenge and swearing of members may be gone through for all the accused at the same time. In case of a difficulty arising from the objection of one of the accused his case may be postponed.

After the court is sworn each of the accused is arraigned and tried separately. **R. 15, 61, 71.**

Q. Under what circumstances would two soldiers be tried together on one charge sheet. Describe how the general procedure would be affected in the case of such a joint trial? **P.C. 06**

A. 1. Any number of accused may be tried together for an offence charged to have been committed by them collectively, *e.g.*, Mutiny.

2. The accused are arraigned jointly, but each will be called on separately to plead and make his defence, and a separate finding and sentence must be passed for each accused. The prosecution will make only one address in reply as regards all the accused. **R. 15, 61, 71**

Q. Mention a charge in which the accused could not claim to be tried separately. **P.C. 91**

A. In the case of conspiring to cause a mutiny or join in a mutiny the essence of the charge is *combination* between the accused, and therefore the nature of the charge does not admit of their being tried separately.
R. 15, 71.

Q. The proceedings of a court-martial are framed for the separate trial of soldiers. What differences arise where two soldiers are jointly arraigned for an offence committed by them in combination? **P.L. 98**

A. 1. Notice of the intention to try the soldiers together should be given to each accused at the time of his being informed of the charge, in order that he may have an opportunity of claiming to be tried separately.

2. Each accused should be told that, if he gives evidence himself, and in doing so gives evidence against the other accused, that other soldier may cross-examine him as to character.

3. Each accused will be allowed separately to challenge the court, to plead, and to make his defence, and a finding must be arrived at separately for each accused, and each

accused found guilty must be separately sentenced, and a separate record will accordingly be made in the proceedings.

4. The evidence and addresses on the part of both the accused will be taken before the prosecutor replies, and the prosecutor will make one address only in reply as regards both of them. **R. 15, 61, 71.**

E.C. 95 **Q**. Two soldiers are being jointly tried for theft, and on being arraigned, one of them says he wishes to call his fellow soldier to give evidence in his defence. What course should the court adopt?

A. The court, if satisfied that such evidence will be material, will proceed to try the soldiers *separately* and thus render available the evidence of the accused who is not on his trial (either by reason of his trial being postponed or on account of his trial being completed).

(It must be remembered, that though each accused jointly arraigned is a competent witness for the defence, none of the other accused can compel him to give evidence.) **R. 15, 71.**

E.C. 97 **Q**. After the arraignment of the accused before a court-martial, what objection may he raise in respect of any charge to which he is required to plead? What special plea may he offer before pleading to the charges in the charge-sheet?

A. 1. *Objection.*—That the charge does not disclose an offence under the Army Act, or is not in accordance with the Rules of Procedure.

2. *Special plea.*—A special plea to the general jurisdiction of the court, *e.g.*, that the court is improperly constituted or that he is not subject to military law, or that he is not amenable to that particular court. **R. 32, 34.**

Q. On what grounds can the accused offer a plea in bar of trial? P.L. 07

A. (*a*) That he has been previously convicted or acquitted by a civil court or a court-martial, or that he has been dealt with summarily by the C.O.

(*b*) That the offence has been pardoned or condoned by competent military authority.

(*c*) That the offence has been committed more than three years ago, or if a civil offence, beyond the limit of time fixed for the offence. **R. 36.**

Q. At what point in the proceedings of a court-martial can a "plea in bar" be offered? P.C. 09

A. At the time of the general plea of "guilty" or "not guilty." **R. 36**

Q. State the procedure on a plea in bar of trial being made. P.L. 07

A. The court consider the facts stated—

(*a*) If they find the plea in bar is proved they must adjourn, and it will rest with the confirming officer to decide whether the accused will be tried or not.

(*b*) If they find the plea in bar is not proved they will proceed with the trial, but their finding shall be subject to confirmation, like any other finding. **R. 36.**

Q. On being arraigned (1) Sergeant-Major A pleads that he is not amenable to the Court. (2) Private B that more than three years have elapsed since the date of the alleged offence. Distinguish between the pleas, and point out the difference in the subsequent procedure. S.E. 08

A. The former is a special plea to the jurisdiction of the court; the latter is a plea in bar of trial.

In the former case the plea, if allowed by the court, does not require any confirmation, and the C.O. will either release the accused or order a new trial; in the latter case the decision of the court is subject to confirmation. **R** 34, 36.

E.C. 97 **Q**. The accused on being arraigned determines to raise every possible objection to the procedure of the court. State the objections and pleas that may successively be brought forward, and explain in each case to what matters they would refer?

A. 1. He may object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with the Rules of Procedure.

2. He may offer a special plea to the jurisdiction of the court or a plea in bar of trial. (For details see preceding answers.) **R**. 32, 34, 36.

P.C. 95 **Q**. State what course should be adopted in each of the following cases, which might occur at a court-martial: (1) the accused refuses to plead to the charge; (2) the accused appears incapable of pleading to the charge owing to mental derangement; (3) the accused, on being asked to plead says to the president "Go to hell."

A. 1. A plea of "not guilty" should be entered.

2. The court will investigate as to the sanity of the accused, and may find that he is, by reason of insanity, unfit to take his trial.

3. The court can either enter a plea of "not guilty" and proceed with the trial, making a report (in a separate document to the convening officer) of the language of the accused or can sentence the accused there and then to 21 days' D. (The mere fact of these words being used on one occasion would not justify the latter course.) **S**. 28, 130; **R**. 35, 57.

SECTION XII.

PROCEDURE AT TRIAL.

Q. The prosecutor on a court-martial finds that one of the witnesses for the prosecution is favourable to the accused. Supposing that the case could be proved without the evidence of this witness, would the prosecutor be justified in omitting to call him? Give your reasons. **A. 92**

A. No. It is the duty of the prosecutor to behave impartially, and not to suppress any evidence in favour of the accused. **R 60**

Q. The accused in his defence sets up an *alibi*. As prosecutor you have reason to suppose it to be false. Give some illustrations of how you would proceed to attack it. **S. 90**

A. As the accused in his defence sets up an *alibi*, the onus lies on him to prove it. It is believed that the *alibi* is false, and hence the accused and his witnesses are either giving false evidence, or the witnesses are deceived as to the identity of the accused.

By cross-examination the credibility of the evidence would be first tested, and if the evidence cannot be sufficiently shaken, the questions would be directed to the point as to whether the witnesses are not deceived as to the identity of the accused, either by reason of their not being sufficiently close to him, or by darkness, or by his resemblance to some other person. **M 82, 532**.

Q. Every particular essential to prove an offence charged must be proved step by step. Assuming the charge to be one of making false accusations, etc., what facts will have successively to be proved by .the prosecution? **E.C.94**

A.
1. That the accusation was made against an officer or soldier by the accused.
2. That it was false.
3. That the accused made it, knowing it was false.

R. 39.

P.L.08 **Q**. At the close of the prosecution the accused states that he intends to call witnesses, other than himself, to the facts of the case. Describe shortly the procedure up to the finding.

A. The accused may make an address.

The accused may give evidence himself and may call his witnesses after the evidence for the defence has been given.

The accused may make a second address.

The prosecutor may address the court in reply. **R. 41.**

P.C.03 **Q**. Explain the difference in the procedure before a court-martial when the accused:

(*a*) Elects to give evidence, but does not call any other witnesses as to facts.

(*b*) *Does* call witnesses as to the facts other than himself.

In the latter case when does the accused give his evidence?

A. (*a*) Prosecutor's opening address.
Evidence for prosecution.
Evidence of accused.
Prosecutor's second address.
Address of accused, who may call witnesses as to character.

(*b*) Prosecutor's opening address.
Address of accused.
Evidence of accused and of his witnesses.
Second address of accused.
Prosecutor's second address.

The accused should give his evidence before that of his own witnesses. **R. 40, 41.**

E.C.97 **Q**. At a court-martial held not long ago the accused did not call any witnesses except as to character, but employed counsel in his defence, and made a statement in addition to that of his counsel. Describe the order in which the addresses of the prosecution and defence would be delivered, and show at what stage in the proceedings the statement of the accused would be made.

A. Prosecutor's first address.
Statement of accused.
Counsel of defence, first address.
Counsel of defence, second address.
Prosecutor's second address. **R. 39, 40, 94; M. 571.**

Q. A G.O.C.-in-Chief at home wishes to engage counsel to appear on behalf of a prosecutor. **C 10**

(*a*) What authority is necessary?

(*b*) In what circumstances should such a course be adopted?

A. (*a*) An application, with full details, is to be sent to the Army Council, and a copy of it sent direct to the Treasury Solicitor.

(*b*) Counsel should only be applied for in cases of an exceptionally difficult or complicated nature. **K. app. 8.**

Q. What persons may act as counsel before a court-martial? To what extent is the mouth of the accused closed when he employs counsel in his defence? **C. 94**

A. 1. In England and Ireland a barrister-at-law or solicitor.
In Scotland an advocate or law agent.
Elsewhere, persons in similar positions.

2. The counsel acts for the accused throughout the trial, and assumes all his rights of examining and cross-examining witnesses, making statements or objections, putting in pleas and addressing the court, and the accused has not the right himself to do any of the above things without the special permission of the court.

The accused may, however, give evidence himself or make a statement either orally or in writing at the close of the case for the prosecution, and before his counsel makes his address. He need not do either, but cannot do both. **R. 98, 93, 94.**

E.C 99 **Q**. When the accused is defended by counsel, how does the fact of his right to elect to give evidence himself affect his right to make a statement in addition to the address of his counsel?

A. See last answer. **R.** 94.

P.C. 09 **Q**. A N.-C. officer on trial, and defended by counsel, does not wish to give evidence, but desires to make a statement.

(*a*) At what point is this statement made?

(*b*) In what ways does it differ from evidence?

A. (*a*) At the close of the prosecution and before the address by his counsel.

(*b*) It is a consecutive statement, not on oath, and does not subject the accused to cross-examination. **R.** 94.

E.C.96 **Q**. At a court-martial a soldier employing counsel desires to exercise his right of making a statement, giving his own account of the subject of the charges against him. How does the expression of the intention to make a statement affect the procedure, and at what stage in the trial is the statement made?

A. 1. If the accused makes a statement, prosecutor can call witnesses in reply, and reply to the address of the counsel for the defence, and the procedure will, as far as possible, be the same as if the accused had called witnesses to the facts of the case, other than himself.

2. At the close of the case for the prosecution and before the address of the prisoner's counsel. **R.** 41, 94; **M.** 572

S.E.03 **Q**. At what stage of the trial would the accused give evidence on his own behalf?

A. He is entitled to give his evidence at any time whilst the evidence of the defence is being heard, but he should usually give his evidence before any other witnesses for the defence, as, otherwise, the value of his evidence may be considerably discounted. **R.** 41.

Q. An accused in the course of his trial calls upon one of the members of the court to testify in his favour. Describe the procedure. P.C.08

A. The member must be sworn like other witnesses in open court, and be subject to cross-examination. He does not cease in any respect to be a member of the court. **S. 50; R. 77.**

Q. At a trial the accused first pleaded "not guilty," but after the first witness had given his evidence, pleaded "guilty." What course is to be adopted? **C. 09**

A. The court, after warning the accused of the effect of his plea, will record at once a plea and finding of "guilty," and proceed accordingly. **R. 35; M. 563.**

Q. How is the voting of the members of a court-martial carried out? Under what circumstances can a casting vote be given? **P.L.01**

A. The opinion of each member shall be taken in succession, beginning with the junior in rank.

A *casting vote* is a second vote which may be given in certain cases by the president in order to decide a question when there is an equality of votes for and against the decision sought. It may be given (in the case of an equality of votes) on any question arising after the commencement of the trial other than on the finding or a sentence of death.

(The president has no casting vote in the question of challenges as the trial has not commenced.) **S. 50; R. 69**

Q. In the event of an equal number of votes at a court-martial what is the result (1) in the case of a finding, (2) in the case of a sentence. P.C.03

A. 1. In the case of an equality of votes on the "finding," the accused shall be deemed to be acquitted.

2. In the case of an equality of votes on the "sentence" (other than a sentence of death), or any question arising after the commencement of the trial except the finding, the president shall have a second or casting vote. **S. 53; R. 69.**

C. 05 **Q**. After the assembly of a court-martial, there arises a difference of opinion among the members as to (1) the challenge of a member, (2) the admissibility of certain evidence, (3) the finding, (4) the sentence. How is the matter decided?

A. 1. *Challenge.*—The objection is allowed if half of the members vote for it.

2. *Evidence.*—Decided by a majority of votes. The president has a casting vote.

3. *Finding.*—The accused is acquitted if the votes are equally divided. The president has *not* a casting vote.

4. *Sentence.*—As in (2), except in the case of a sentence of death, when a majority of two-thirds is necessary. **S. 48, 53; R. 69.**

P.C. 00 **Q**. A court-martial thinks it desirable that its members should personally inspect a barrack room in which the offence under investigation has been committed. What course should be pursued?

A. The inspection of the room must take place in open court in the presence of the accused, and all the members, together with the prosecutor and accused, must proceed to the room in question. **R. 65.**

P.C. 06 **Q**. Would it be possible for the court to adjourn to the quarters of a sick witness for the purpose of taking his evidence?

A. The whole court, together with the prosecutor and the accused, may adjourn to the abode of the witness for the purpose of taking his evidence.

(The *deposition* of a witness who has given evidence at a preliminary inquiry, and is proved to be too ill to travel, if duly attested by a justice of the peace, and taken in the presence of the accused who had an opportunity of cross-examining the deponent, is admissible when a court-martial is trying civil offences under Section 41.) **R. 65.; M. 70.**

Q. The proceedings of a court-martial have been completed up to and including the finding, and the accused has been found guilty. Describe the procedure if at this stage in the proceedings the accused is found to be so ill as to render it impossible to continue the trial. In the event of the court being dissolved, is he liable to be arraigned again on the same charge before a new court? E.C. 04

A. 1. The court will ascertain the facts of the illness by evidence and record the same, and adjourn, and forward proceedings to the convening officer, who will re-assemble the court when the accused recovers; or if it is impossible to continue the trial, will dissolve the court.

2. Yes. **S. 53; R. 66, 67.**

Q. During trials by court-martial the following events take place:— **S. 89**

1. A member asks permission to leave the court for half an hour.
2. The accused is persistently abusive to the court.
3. A civilian witness refuses to give evidence.

What would be the procedure in each case, considered separately?

A. 1. The court may adjourn for half-an-hour to enable the member to attend, or it may proceed without him if not reduced below the legal minimum.

2. The accused might be tried before another court for contempt of court, or may be summarily awarded 21 days' H.L. or, in the case of a soldier, 21 days D. by order under the hand of the president.

3. The president of the court may certify the offence under his hand to the High Court of Justice in England, or Court of Session in Scotland, but the case must be reported in the first instance to the War Office.

S. 28, 126; R. 65.

S. 06 **Q**. (*a*) At a court-martial one of the members is absent during part of the hearing. The president decides to go on without him. What effect will this have on the procedure?

(*b*) Explain the procedure involved by the death of the president during the hearing of the case.

A. (*a*) The court may proceed without the member, provided it is not reduced below the legal minimum, otherwise it shall be dissolved.

(*b*) Provided the court is not reduced below the legal minimum, the convening authority may appoint the senior member, if of sufficient rank, to be president, and the trial shall proceed accordingly. **S**. **53**; **R**. **65, 66.**

P.L. 02 **Q**. On the re-assembly of a court-martial after adjournment the president is unable to attend. How would the case be dealt with?

A. The court must be adjourned. The convening officer may appoint the senior member of the court, if of sufficient rank, to be president, provided that the court is not thereby reduced below the legal minimum. Otherwise the court must be dissolved. **S**. **53**; **R**. **65, 66.**

P.L. 08 **Q**. The undermentioned events take place during courts-martial. How would you, as president, act?

(*a*) A member is taken seriously ill.

(*b*) The prosecutor, on a charge of insubordination, produces evidence before the finding that the accused is a notoriously violent man.

(*c*) A military witness uses insulting language to the court.

(*d*) The prosecutor comments on the fact that the accused has given his evidence after that of the witnesses of the defence.

A. (*a*) The court will proceed without the member provided it is not reduced below the legal minimum, otherwise it shall be dissolved.
S. 53; R. 65.

(*b*) The prosecutor should be stopped. The character of an accused person is not admissible as evidence of his guilt. Even the conduct books must not be produced before the finding except to rebut evidence as to character produced by the accused.
R. 40; M. 59.

(*c*) 1. He may be placed in arrest and charged with "contempt" under S. 28.
2. He may be awarded detention up to 21 days by order under the hand of the president. **S 28.**

(*d*) The prosecutor is justified in commenting on the fact. **S. 41.**

Q. In the course of different trials by court-martial E.C. 98
the following persons are absent on account of serious illness.

1. The accused.
2. The judge-advocate.
3. The prosecutor.
4. An indispensable witness.

How would each of these cases, taken separately, be dealt with?

A. 1. The court will take evidence as to the illness and adjourn. If it is impossible to continue the trial within a reasonable time the court will be dissolved. **S. 53; R. 67.**

2. A court-martial cannot proceed in the absence of the judge-advocate, and must adjourn till he returns or a new one is appointed.
R 65, 102.

3. The court should adjourn till he returns or a new one is appointed, but the temporary absence of a prosecutor at any stage in the proceedings does not affect their legality.
R. 25, 65.

4. The court will adjourn and report to the convening officer. **R** 79.

C. 01 **Q**. Describe the general procedure of a court-martial when the accused pleads "guilty."

A. 1. The president, on behalf of the court, ascertains that the accused fully understands the nature and meaning of the charge and of the difference in procedure that will be caused by his plea, and shall advise him to withdraw his plea of "guilty" if it appears from the summary of evidence that he ought to plead "not guilty." If the accused persists in his plea—

2. The plea of guilty is recorded as the finding of the court.

3. The court receive any statement the accused desires to make in reference to the charge.

4. The summary of evidence is read and annexed to the proceedings, or, if there is no summary, sufficient evidence is taken to guide the court as to the sentence, and to enable the confirming officer to know all the circumstances of the case.

5. The accused may then make a statement in mitigation of punishment, and the court may allow him to give evidence himself or call witnesses to prove it.

6. The accused may give evidence himself or call witnesses as to character.

The usual *proceedings on conviction* then follow.

(When the accused pleads "guilty," there is no regular trial, but merely a consideration of the proper amount of punishment. If the accused wishes to *prove* extenuating circumstances, or, indeed, to make any kind of defence whatever, he should plead "not guilty.") **R.** 35, 37, 46; **M.** 574.

Q. What points should be made clear to the accused by the president on the former pleading guilty to a charge? **P.L. 06**

A. See last answer (1).

Q. A soldier arraigned on two alternative charges pleads guilty to both of them. Point out the manner in which such a plea should be treated, and comment on the situation that may arise when one of the charges is more serious than the other. **S.E. 07**

A. 1. It should be pointed out to the accused that as the charges are alternative, he can only be found "guilty" on one of them, and should plead accordingly.

2. A soldier ought not, by pleading guilty to the smaller offence, to escape punishment for the greater. The court should proceed with respect to all the charges as if the prisoner had not pleaded "guilty" to any charge.

R. 37; M. 582.

Q. A soldier is being tried by court-martial on alternative charges. 1. Embezzling £10 belonging to regimental funds. 2. Neglect to the prejudice, &c., in causing the loss of the same sum of money. The accused pleads "not guilty" to the first charge, but "guilty" to the second. What course ought the court to adopt? **P.C. 03**

A. The court will proceed with respect to both charges as if the accused had not pleaded guilty to either charge. **R. 37; M. 582.**

Q. An accused is being tried for "making away with his clothing, &c.," and also for "losing by neglect his clothing, &c." He pleads "not guilty" to the first and "guilty" to the second charge. Explain the subsequent proceedings. **P.L. 07**

A. The first charge under ordinary circumstances would be the gravest, and, therefore, the court should try the whole case. It would not be illegal, however, to accept the plea and sentence the accused on the charge to which he has pleaded guilty. If from the summary of evidence it appears probable that the accused committed the graver offence, the whole case should always be tried. **R.** 37.

C. 08 **Q**. A soldier pleads "guilty" to desertion, but in his statement in mitigation of punishment he alleges that he intended to rejoin his unit. What procedure is to be adopted?

A. The accused has pleaded guilty in error and the court shall alter the record and enter a plea of "not guilty" and proceed with the trial accordingly. **R.** 35.

E.C.04 **Q**. A soldier arraigned on two charges (not alternative) pleads "guilty" to one charge and "not guilty" to the other. Describe how the general procedure is affected.

A. 1. When the accused pleads "guilty" to the first charge, the president shall ascertain that the accused understands the nature of the charge and the effect of his plea, and then his plea and the fact that the provisions of R. 35 (B) have been complied with is recorded.

2. The trial then proceeds on the other charge to which the accused has pleaded "not guilty" until the finding is recorded.

3. The court will then be re-opened and the charge to which the accused has pleaded "guilty" is again read to him, and the plea is recorded as the finding of the court.

4. The court shall receive any statement the accused desires to make in reference to the charge.

5. The summary of evidence is read, marked, signed by the president, and attached to the proceedings.

6. *Question to accused.*—Do you wish to make any statement in mitigation of punishment?

The substance of the statement of the accused is taken down, and the court may give him permission to give evidence himself or to call witnesses to prove it.

7. *Question to accused.*—Do you wish to give evidence yourself or to call any witnesses to character?

Yes (no).

8. The usual proceedings on conviction follow, and the court is closed to consider their sentence. **R. 35, 37 ; M. 564, 582.**

Q. Describe the effect on the general procedure of a court-martial of the accused pleading " guilty " to some charges and " not guilty " to others. (The charges are not framed in the alternative). S.E.01

A. The court records the plea of " guilty " to those charges to which the accused has pleaded " guilty." The court then proceeds with the trial of the accused on the charges to which he has pleaded " not guilty " up to and inclusive of the finding. The court is then re-opened and the charges to which the accused has pleaded " guilty " are again read to him, and the pleas are recorded as the finding of the court, and he is allowed to make any statement he wishes in reference to them. The summary of evidence is read, marked, signed by the president, and attached to the proceedings. The accused is then asked if he has any statement to make in mitigation of punishment, and may be allowed to give evidence himself or call witnesses in support of it. The accused may always give evidence himself or call witnesses as to character.

The usual " proceedings on conviction " then follow. **R. 35, 37 ; M. 564, 582.**

SECTION XIII.

THE DEFENCE.

P.C. 10 **Q**. You are asked by a soldier of your regiment to act as "friend of the accused" at his trial by district court-martial. To what privileges are you entitled?

A. Before a general or district court-martial a counsel or an officer subject to military law may call and examine witnesses and address the court, put in any plea, and otherwise act in the place of the soldier, but in such case the accused shall not have the right himself to do any of the above matters.

(The accused, defended by counsel or by an officer acting as counsel, may either give evidence himself, or may, at the close of the case for the prosecution, and before the address of his counsel), make a statement giving his own account of the subject of the charges against him. He need not do either, but cannot do both. **R. 13, 87, 94**

P.C.06 **Q**. An accused before a court-martial is defended by counsel, and has the option of either giving evidence himself or making a statement. How does the one differ from the other?

A. The statement made by a person defended by counsel differs from the evidence in that

1. It is not on oath, nor subject to the rules of evidence, and the accused cannot be cross-examined on it.
2. It is a consecutive statement and may be in writing, and is delivered by the accused from his place in the court and not from the place of an ordinary witness. **R. 94**.

P.L.95 **Q**. An officer appears at a regimental court-martial with a view of assisting a soldier in his defence. Has such officer the right to address the court and examine and cross-examine witnesses?

A. No. An officer subject to military law has the same rights and duties as counsel, *i.e.*, may act as such at a general or district court-martial, but cannot address the court at a regimental court-martial. **R. 87, 88.**

Q. A soldier in arrest awaiting trial asks that Captain N. may help him. What may Captain N. do (*a*) if still serving? (*b*) if he has retired? P C 04

A. (*a*) At a G.C.M. or D.C.M., he has all the rights and duties of counsel and may call and examine witnesses, make an objection or statement, address the court, put in any plea and otherwise act in the place of the accused, but in such case the accused has not the right himself to do any of the above matters (except as regards making a statement at the close of the prosecution if he does not give evidence himself).

(*b*) At any court-martial he may be present in court and advise the accused on all points, and suggest to him the questions to be put to witnesses, but he may not examine the witnesses orally or address the court. **R. 87, 89.**

Q. An officer is acting as a friend to a soldier in arrest who is being tried. The prosecution desires to call upon the officer in question to give evidence as a witness. Comment on the situation thus created. S 93

A. If the officer is assisting the accused simply as a friend he may be examined as a witness, but is not permitted, except with his client's consent, to disclose any communication made to him by his client, or make known any advice given by him to his client. If the officer appears on behalf of the accused as counsel he cannot be examined as a witness, but a question may be put to him through the court, and any such question he may decline to answer. **R. 91; M. 79.**

P.C. 05 **Q**. Owing to a communication made to you by the accused you withdraw from the position of prisoner's friend. Can you be questioned at the trial as to the nature of the communication?

A. A legal adviser is not permitted, whether during or after the termination of his employment, unless with his client's express consent, to disclose any communication made to him as such legal adviser.

The expression "legal adviser" includes the person assisting the accused during a trial by court-martial. **M. 79.**

E.C. 98 **Q**. At different trials the following pleas were raised by a soldier in his defence:—

(1.) That the offence was condoned.

(2.) That the offence was committed by mistake, and not intentionally.

Point out the circumstances which might cause such lines of defence to be of value.

A. 1. The person who condones an offence must be an officer who has power to dispose of the case, and who has advisedly overlooked the offence while in full possession of the facts.

If an offender has been ordered to do duty through some misapprehension, or on account of the exigencies of the service, or if he has been given a conditional release and the conditions have not been complied with, the offence is not condoned.

2. If the offence charged arose from a lawful act, the fact that it was committed by mistake would be a good defence. If the act was an unlawful one prisoner is liable for all the consequences of it, whether committed by mistake or not. **K. 482; M. 91, 92.**

A. 93 **Q**. Gunner James Smith, who is being tried by court-martial, states in his defence that he has been put on guard since the charge was brought forward. The prosecutor admits that this is true, and brings forward evidence to show that the man was detailed in error instead of John Smith. Is the prisoner's defence valid?

A. No. If, by error, an offender has been ordered to perform any duty, he is not thereby absolved from liability to be proceeded against for his offence. **K.** 482.

Q. A prisoner brought to trial pleads in his defence "that he did not know he was doing anything wrong." Comment on the above plea. S.E.06

A. *Ignorance of law* is no defence to a criminal charge, but it may properly be taken into consideration in determining the amount of punishment to be awarded.

Ignorance of fact will very often be an excuse, *i.e.*, a person's conduct will, as a rule, be judged as though the facts which he honestly and on reasonable grounds believed to exist at the time of such conduct had been the actual facts.

(In some few cases a man does an act at his peril and an honest and reasonable belief as to facts will not protect him if he is actually mistaken.) **M.** 89.

Q. When being tried by court-martial the accused pleads in his defence that he was drunk and did not know what he was doing. To what extent should such a defence influence the decision of the court as to its finding and sentence? E.C.01

A. Drunkenness is no excuse for crime, but where *intention* is the essence of an offence drunkenness may justify a court in reducing the crime to one of a less serious character or in awarding a less punishment than the crime would otherwise have deserved, *e.g.*, a man might use insubordinate language, or wilfully defy authority while in a state of drunkenness, and a court might pass a more lenient sentence than if the like offences had been committed by an offender who was sober and in full possession of his senses. **M.** 22.

SECTION XIV.

THE FINDING.

C. 82 **Q**. With regard to the "finding," what difference exists between the procedure of military and civil courts?

A. The procedure in a military court is unlike that in a civil court in the following points. In a military court—

1. The finding does not require a unanimous vote. **R. 69.**
2. The accused can at the same time be found guilty of several totally *distinct* offences. **R 44.**
3. The court may be called upon to *revise* its finding. **R. 51.**
4. The court may have to pass a *special* finding of an exceptional character. **R. 44.**
5. A finding of guilty has to be *confirmed* by an authority independent of the court. **R. 51**
6. The finding of the court (except in the case of acquittal on all charges) is not *disclosed* until promulgated. **R. 53.**

P C.03 **Q**. Where a deviation from the Rules of Procedure takes place in the conduct of a trial to what special points should an officer direct his attention before confirming its proceedings?

A. Whenever it appears that a court-martial—

1. Had the jurisdiction to try the soldier.
2. That the accused was charged with an offence under the Army Act.
3. That the accused was found guilty on legal evidence.

The proceedings may be confirmed notwithstanding any deviation from the Rules of Procedure, or defects, unless it appears that any injustice has been done to the accused. **R. 56.**

Q. Discuss the validity or otherwise of the following conviction by court-martial. S. 04

A private soldier is tried and convicted of drunkenness. The offender's conduct sheet shows three previous cases of drunkenness. The offence was not committed on active service, nor on duty or when warned for duty, nor did the man elect to be tried.

A. Under S. 19 a court-martial has complete jurisdiction to try and punish any case of drunkenness, and this jurisdiction is not limited by S. 46. The C.O. of the soldier has, however, been guilty of a grave breach of duty in not dealing with the case summarily, and the punishment awarded by the court-martial should not exceed that which should have been awarded by the Commanding Officer.

Q. How is the finding of a court decided? **C. 06**

A. The votes of the members are taken, commencing with the junior member, and the question is decided by a majority of votes.

If the votes are equally divided the accused is acquitted. The president has not a casting vote.

S. 48, 53; R. 69.

Q. Describe the procedure when a court-martial acquits the accused of all the charges brought against him. In the event of the confirming officer disagreeing with the verdict of the court what course is open to him? **P.C.07**

A. 1. The president will date and sign the proceedings, the finding will be announced in open court, and the accused will be released.

2. He will not write on the proceedings, but will embody his views in a letter to the Army Council, who will give such orders as may be necessary. **R. 45; K. 590.**

E.C.05 **Q**. A soldier arraigned on three charges (not alternative) is found "guilty" of two of the charges, and acquitted of the third charge. When is the finding of acquittal on the third charge announced?

A. As the finding on two of the charges is guilty, the court will, in the usual way, proceed to consider their sentence, and the finding of acquittal will be promulgated together with the finding of conviction. **R**. **46, 53**.

P.C 03 **Q**. Explain the circumstances under which a court might "honourably" acquit a soldier.

A. When the charge against the accused affects his *honour*, and nothing in the case brings discredit on his character he may be "honourably" acquitted. It is incorrect to honourably acquit an officer or soldier on a charge not affecting his honour. **R**. **44**.

P.C.96 **Q**. Does the following finding require confirmation?: "The court find the accused is, by reason of insanity, unfit to take his trial."

Can the accused be brought to trial again before the same court?

A. 1. Yes.

2. Yes; if the proceedings are not confirmed. **R**. **57**.

S.E.05 **Q**. Should there be a variance between the evidence given and the charge, in what case should there be a special finding and in what case acquittal.

A. 1. Where the difference is in respect of the *particulars* of the charge, but the offence is proved and the difference does not prejudice the accused in his defence, the court may record a special finding.

2. Where the variance is in respect of the *Statement of offence*, or the facts proved do not disclose an offence under the Army Act, there must be an acquittal. **R**. **44**.

E.C.96 **Q**. An officer is charged under S. 16 with "behaving in a scandalous manner, etc." At the trial it appears to the Court that the substance of the charge has been proved, but that the offence committed, though grave, does not properly come under the term "scandalous." What course should be pursued?

A. The essence of the charge lies in the word "scandalous" and the prisoner must be acquitted. **S. 16.**

Q. A soldier is charged with "losing by neglect" certain articles of his clothing and regimental necessaries. The court find the accused guilty of the charge with the exception of the words "by neglect." **S. 04**

A. The finding is illegal. The essence of the charge lies in the "neglect." "Losing" the articles is not an offence under the Army Act. **S. 24.**

Q. Give briefly the various circumstances in which a court-martial would be justified in recording a special finding. **P.C. 09**

A.
1. Where the substance of a charge is proved but there is some discrepancy as to the particulars which requires correcting by a special finding.
2. In cases of cognate offences under S. 56.
3. In cases where a man is charged with an offence involving a certain punishment and is found guilty of the same offence as being committed under circumstances involving a less degree of punishment.
4. When there are alternative charges, and the court state what facts they find proved, but leave it to the confirming officer to decide under which charge the offence legally falls.
5. In cases of insanity. **S. 56; R. 44, 57.**

Q. A is being tried under S. 8 (1). The evidence shows that the offence was committed, but that the superior was not in the execution of his office. **P.C. 05**

B is charged with using insubordinate language on the 12th March; but evidence shows that offence was committed on the 11th March.

C is charged with absence from 11th to 18th March; but evidence shows that he was absent from 11th to 18th February.

What findings should the court come to in each case?

A. A. Special finding of "guilty," making clear that the superior was not in execution of his office.

B. Special finding of "guilty," but altering date.

C. "Not guilty." Differences of dates so material as to involve a fresh offence. **R.** 44

P.C.08 **Q**. With the aid of an example explain how a defect in the *particulars* of a charge may be amended by a special finding. Give also a case where a special finding may be passed in respect of the *Statement of the offence.*

A. (*a*) Where the substance of a charge is proved but there is some discrepancy as to details, a special finding may be found, *e.g.*, an accused is charged with absence from 20th to 30th June. The evidence shows that he did not absent himself till the 21st June. The court may find the accused guilty with the variation of the 21st for the 20th June.

(*b*) An accused charged with desertion may be found guilty of absence without leave.
S. 56 ; R. 44, 55.

S.E.10 **Q**. Except in certain specified cases, a court-martial has no power to find a person guilty of any offence other than that with which he is charged. Mention the exceptions.

A.

A PERSON CHARGED WITH—	MAY BE FOUND GUILTY OF—
(*a*) Stealing	Embezzlement, or fraudulently misapplying money or property.
(*b*) Embezzlement	Stealing, or fraudulently misapplying money or property.
(*c*) Desertion	Attempting to desert, or being absent without leave.
(*d*) Attempting to desert	Desertion, or being absent without leave.
(*e*) An offence committed under circumstances involving a higher degree of punishment.	The same offence as being committed under circumstances involving a less degree of punishment.

S. 56; R. 44.

Q. As a rule, every charge alleges a specific offence. P.C.10.

(*a*) Show how provision is made for legalising convictions for offences other than those set out in the charge.

(*b*) Suggest an expedient for obviating recourse to above provisions.

A. (*a*) See last answer.

(*b*) Where there is a doubt about the specific offence committed, make out alternative charges, so as to cover every eventuality.

M. 325, 530.

Q. A soldier has been acquitted by a D.C.M. of a charge of desertion. Can he be punished by his C.O. for absence without leave? S.E.04

A. It has been ruled that he cannot. The court-martial could have found him guilty of absence without leave, but as they did not think fit to do so it would be unjust to punish him on the facts already dealt with.

Q. Point out the several cases in which the accused may be found guilty of an offence less serious than the one with which he has been charged. E.C.10

A. A soldier charged with desertion or attempting to desert, may be found guilty of absence without leave.

A soldier charged with an offence committed under circumstances involving a higher degree of punishment, may be found guilty of the same offence under circumstances involving a less degree of punishment; *e.g.*, a man charged with "striking his superior officer in execution of his office" may be found guilty of "striking his superior officer."

Any one charged with murder may be found guilty of manslaughter, and a soldier charged with certain *civil* offences may be found guilty of an attempt to commit those offences. **S.** 56; **M.** 99, 300.

SECTION XV.

PROCEEDINGS BEFORE SENTENCE.

Q. Explain how the amount of crime shown in the conduct sheets of an accused is brought to the notice of a court-martial before it passes sentence. E.C.94

A. After the finding, the court is re-opened, and an officer, who is duly sworn, produces to the court a statement in writing as to the character and particulars of service of the accused.

The first item in the statement is a fair and true summary of the entries to the name of the accused in the regimental and company conduct sheets, exclusive of convictions by a court-martial or civil court. The entries for drunkenness are stated separately if the charge is for drunkenness, but the other offences are classified under general headings, such as insubordination, absence without leave, etc. The number of offences of each kind that have occurred within the last 12 months, and also since enlistment, are shown.

To the statement is appended a schedule of all convictions by court-martial or civil courts, and the details in the schedule must be certified to have been extracted verbatim from the regimental books. **R.46 : M. 574.**

Q. The prosecutor at a court-martial gives evidence as to character and previous convictions and by mistake is not sworn. How would this fact affect the validity of the proceedings? S.E.01

A. The court has presumably convicted the soldier on legal evidence, and the conviction therefore holds good. As the prosecutor has not been sworn, it must be taken that no evidence as to character and previous convictions have been given, and the confirming officer is responsible that the sentence is amended in accordance with this view.

Q. State briefly what you know as to a "previous conviction." P.C.08

A. Previous convictions include all convictions by court-martial, and convictions by a civil court exceeding seven days' imprisonment.

Convictions by the civil power for offences committed prior to enlistment, or convictions after enlistment of offences committed prior to entry into the service are not to be entered in the regimental conduct sheets, but civil convictions for offences while in a state of desertion or absence are to be entered and given in evidence.

K. 553, 1916; M. 575.

P.C. 11 **Q.** Corporal E. F. under your command is convicted by the civil power for assault and is sentenced to seven days' imprisonment.

(*a*) What further action should be taken by you?
(*b*) Is any record kept of such conviction?
(*c*) Should the record of conviction appear in the schedule of convictions produced at any subsequent court-martial?

A. (*a*) Report to an officer not below the rank of Brigadier-General with the view to get the offender reduced.
(*b*) An entry will be made in the regimental conduct sheet, and a copy of the conviction will be annexed to it.
(*c*) No. When the imprisonment is for seven days and under, the conviction is to be treated only as an ordinary entry in the regimental conduct book. **K. 505, 1916.**

P.L. 95 **Q.** A soldier is being tried for theft from a comrade by court-martial. He is known to have been a notorious London pickpocket, and to have been convicted of larceny several times at the Mansion House. In the proceedings on conviction, is the prosecutor justified in producing evidence as to these former convictions? Quote your authority.

A. No. **K. 1916.**

P.C. 96 **Q.** May previous convictions in his former corps be produced against a soldier charged with fraudulent enlistment?

A. Yes. But if, as a result of the trial, he is held to serve on his last attestation they will not be further recorded against him. **K. 553.**

Q. How are previous convictions proved when brought forward in evidence before a court-martial? **E.C. 93**

A. By the production of a verbatim extract from the regimental books, certified by the officer in charge of those books. A conviction by a civil court may also, if necessary, be proved by the production of a certificate of the conviction. **R. 46**

A witness must always be called to prove the identity of the soldier with the person stated in the extract or certificate to have been convicted. **S. 164; R. 46; M. 575.**

SECTION XVI.

THE SENTENCE.

S. 94 **Q**. State the general effect of the instructions and considerations which, according to the Manual of Military Law and the King's Regulations, should be taken into account by courts-martial in awarding punishment.

A. The court will have regard to the nature and degree of the offence, the previous character of the soldier, and the consequences entailed by the sentence.

They will consider if any circumstances have been disclosed by the evidence in extenuation or aggravation of the offence. Care should be taken to discriminate between offences due to youth, temper, etc., and those due to premeditated misconduct.

Where a soldier has elected to be tried by a district court-martial, instead of submitting to the jurisdiction of his C.O., the court, in ordinary circumstances, should not give a heavier sentence than that which the C.O. has power to award.

In awarding imprisonment or detention, the court will keep in view the locality and climate in which the soldier has to undergo sentence.

Sentences must vary according to the requirements of discipline, but in ordinary circumstances, and for a first offence, a sentence should be light. **R. 7; K. 583,**

P.C.08 **Q**. What are the considerations that should influence a court in deciding whether they should pass a sentence of imprisonment or detention?

A. *Detention* should be awarded in the case of offences against discipline and for purely military offences when it is not intended to award "discharge with ignominy." *Imprisonment* will be awarded in all cases where "discharge with ignominy" is desirable, and for all felonious and disgraceful offences. **K. 583.**

Q. For what reason has detention been introduced into the scale of punishments? P.L.08

A. In order that soldiers convicted of purely military offences should not, as a rule, be subject to the stigma attached to imprisonment. **K**. 583.

Q. As junior member of a court-martial, you are asked by the president for your opinion as to the sentence. Assuming that the punishment of detention is suitable to the case, state the considerations that should guide you in fixing on the amount to be awarded. C. 91

A. The minor offences of soldiers, as laid down in the table in the King's Regulations, such as absence, drunkenness, minor insubordination, loss of kit, etc., will, as a rule, be sufficiently punished by detention not exceeding 28 days.

A punishment not exceeding 112 days' detention should be given for

Striking a superior.
Disobeying a lawful command. (Graver cases.)
Desertion (after 6 months' service).
Fraudulent enlistment.
False evidence and false accusation.
Conduct to the prejudice, etc. (of a serious nature).

These sentences may be increased if the offence has been repeated or attended with circumstances which add to its gravity. **K**. 583.

Q. May a member who votes for the acquittal of an accused decline to vote as to sentence? C 06

A. Every member must give his opinion as to the sentence, notwithstanding that he has given his opinion in favour of acquittal.

The court, having given their verdict as jurors, must act as a judge in awarding an adequate punishment. Though a member may individually dissent from the finding, he is bound to act in accordance with the verdict of the court which has been legally passed by a majority of votes. **R. 69.**

C. 04 **Q.** In the event of there being a difference of opinion among the members of a court-martial as to the sentence they should award, how is the matter settled?

A. 1. Where opinions differ as to the nature of the punishment, the most lenient that has been suggested is first voted on, and if not carried, then the next most lenient, and so forth, until an absolute majority of opinions is in favour of a certain nature of punishment.

2. The amount of the punishment is next decided on in a similar way, the most lenient proposal being voted on first, and if not carried, then the next most lenient, and so forth, until an absolute majority in favour of a certain amount of punishment is obtained.

(The opinions of the members should be taken in succession, beginning with the junior in rank. In case of an equality of opinions, the president has a casting vote.) **R. 69.**

E.C.07 **Q.** In the event of an equal number of votes at a court-martial what is the result—

(*a*) In the case of a "finding"?
(*b*) In the case of a "sentence"?

A. (*a*) The prisoner is acquitted.
(*b*) The president gives the casting vote.

S. 53; R. 69.

P.C.05 **Q.** Can a witness be asked a question as to the votes given by members at a previous court-martial?

A. No. **S. 52.**

C. 10 **Q.** How are the whole of the proceedings authenticated?

A. By the signature of the president, when he dates and signs the sentence. **R. 50**

Q. State what you know as to the date at which detention or imprisonment is deemed to commence. **E.C. 06**

A. A term of detention, imprisonment, or P.S., whether the sentence has been revised or not, or whether the prisoner is already undergoing sentence or not, shall be reckoned to commence on the day on which the sentence and proceedings are signed by the president. **S. 68; R. 50.**

Q. Can a court-martial award a sentence of imprisonment or detention to a soldier who is undergoing a previous sentence of the same character? **C. 06**

A. Yes, for an offence arising out of his imprisonment or detention, but the new sentence will run concurrently with the unexpired portion of the former sentence, and the total amount of sentence to be undergone must not exceed two years. **S. 68; K. 584**

Q. A soldier tried by district court-martial on the 1st March is sentenced to 56 days' detention. The proceedings are sent back for revision on the 4th March, and on the 5th March the court re-assembles and reduces the sentence to one of 42 days' detention. When will the sentence awarded finish? **P.L. 10**

A. 11th of April. **S. 68.**

Q. A soldier under sentence of 12 months' H.L. awarded 31st January, 1910, is again sentenced on 19th August, 1910, to 2 years' H.L. What action would you take as confirming officer? **P.C. 09**

A. The court-martial should be re-assembled for revision of the sentence and a minute forwarded to them, pointing out that their sentence should be such as would expire not later than 31st January, 1912. **S. 68; R. 51; K. 588.**

Q. Private A is sentenced on 20th November to 56 days' detention. While undergoing detention he is again tried on the 18th December. The court decide to increase the original punishment by 56 days. Write out the sentence of the court. **P.L. 08**

A. "To undergo detention for eighty-four days." **S. 68.**

C. 04 **Q**. State the considerations to be kept in mind by a court-martial who desire to award one year's H.L. to (1) an officer, (2) a N.-C. officer, (3) a private who is already undergoing a sentence of imprisonment.

A. 1. The officer shall be sentenced to be cashiered before he is sentenced to imprisonment.

2. Imprisonment necessitates reduction, but it is desirable to specify the reduction in the sentence.

3. The new sentence commences on the day the proceedings are signed by the president, and runs concurrently with the unexpired portion of the original sentence, but the total amount of the imprisonment must not exceed two years. **S**. 44, 68, 183 ; **M**. 577.

P.L. 09 **Q**. From what date does a N.-C. officer take rank and precedence who has been—

1. Reduced to a lower rank by sentence of a court-martial.
2. Summarily reduced to a lower rank under provisions of S. 183 (2).

A. 1. Date of signing original sentence.

2. Date specified in order or, otherwise, date of order. **S**. 183 ; **R**. 50 ; **M**. 577.

C. 08 **Q**. What are the rules to be observed by a court-martial in awarding terms of imprisonment or detention.

A. 1. Terms of imprisonment or detention not amounting to six months will be awarded in days.

2. Terms of imprisonment or detention of one year and two years will be awarded in years.

3. Other terms of imprisonment or detention will be awarded in months, or, if required, in months and days. **K**. 585.

E.C. 98 **Q**. State what you know as to the following matters:—

1. The form of sentence it is desirable to adhere to when awarding a sentence of imprisonment or detention to a N.-C. officer.

2. The description of the accused when awarding a sentence of any kind to an acting N.-C. officer.
3. Stating the value in the sentence of articles referred to in the charge as having been made away with.

A. 1. A sentence of reduction to the ranks should precede a sentence to imprisonment or detention.

2. Acting rank is not cognisable in the sentence of a court-martial. The permanent rank of the soldier should alone be stated. (It is customary to notify the acting rank in brackets in the charge-sheet.)

3. When values are not attached to any articles in a charge, all reference to such articles will be omitted in the sentence. In the case of kit, values are only attached in the charge to articles of Government property, the value of which has to be made good to the public.

S. 183; K. 563; M. 577.

Q. What is the effect of a sentence of forfeiture of seniority of rank in the case of a N.-C. officer. P.L. 10

A. The seniority in the rank is alone affected, but the period of service in the rank is not otherwise affected, e.g., a sergeant of 6 years' service might by loss of seniority become the junior sergeant of his corps, but still he would be a sergeant of 6 years' service for the purposes of pension. **S. 44.**

Q. Regimental-Sergeant-Major ——, ——— Regiment, has been convicted by a district court-martial, of which you are president, of a fraudulent offence involving a loss of £40. Write out in proper form the gravest sentence that the court is able to inflict on him. P.C. 95

A. The court sentence the accused, No. ——, Regimental Sergeant-Major ——, ——— Regiment, to be dismissed the service, and to be put under stoppages of pay until he has made good the sum of forty pounds in respect of the money embezzled by him.

Signed at this day of 190 .

———, President.

(It is advisable to place the accused under stoppages of pay as money may be due to him. In the event also of the sentence of dismissal being mitigated, a stoppage in respect of future pay could be enforced. **M. 577.**

P.C. 94 **Q**. A court-martial decides to sentence an officer, under trial, to the maximum amount of imprisonment with H.L. in its power. Write out, in due form, that part of the proceedings embodying the sentence.

A. The court sentence the accused, Captain James Smith, 1st Battalion Wessex Regiment, to be cashiered and to be imprisoned with H.L. for two years.

Signed at this day of 19

(Signature), Judge-advocate.
(Signature), President.

P C. 93 **Q**. Lance-Corporal A.B. is tried by district court-martial and awarded the maximum sentence in the power of the court. Write out the "sentence" portion of the proceedings in proper form.

A. The court sentence the accused, No. — Private A.B. ——, 1st Battalion Lancashire Regiment:

To be imprisoned with H.L. for two years, and

To be discharged with ignominy from His Majesty's service.

Signed at this day of 19

———, President.

C. 10 **Q**. Comment on the following sentences awarded by court-martial:—

(*a*) A D.C.M. sentenced a N.C. officer to be fined £1 for drunkenness.

(*b*) A D.C.M. sentenced a soldier to 56 days' D. and to be discharged with ignominy.

A. (*a*) The fine should be preceded by reduction to a lower grade, or to the ranks. A N.-C.

officer is in a position of trust, and if he fails in that trust should have his status reduced before inflicting another punishment. As the sentence cannot be increased on revision, the confirming officer would probably confirm the finding but not the sentence.

(*b*) The two punishments cannot be combined. The "discharge" would be omitted on revision or remitted by the confirming officer. **S. 44; K. 583, 591.**

Q. A soldier is convicted by district court-martial of the offences of desertion and losing by neglect his helmet, waistbelt, shirts, socks, and holdall. Write out in proper form the maximum sentence which the court could award. P.L.94

A. The court sentence the accused (No. —, Rank ——, Name ——, Battalion ——, Regiment ——) to be imprisoned with H.L. for two years, and to be put under stoppages of pay until he has made good the value of the following articles, viz.: one helmet, value ——, one waistbelt, value ——.

Discharge with ignominy might be added to the above sentence, but it is not usual to award this punishment in cases of desertion. **M. 577.**

Q. A regimental court-martial sentences a N.-C. officer to be "reprimanded." Point out the mistake, and show how it could be remedied. P.C.00

A. The punishment is illegal. The finding of the court-martial might be confirmed and not the sentence, or the court might be re-assembled for revision in order to pass a legal sentence. **R. 51; K. 591.**

Q. A court-martial sentence a corporal to be reduced to the rank of lance-corporal, and, on re-assembly, by order of the confirming officer they pass a sentence of 21 days' detention. Is the sentence legal? .05

A. Yes. The first sentence is wholly illegal and inoperative, and the court on revision have the same power as if they had passed no sentence at all. A sentence of reduction to the ranks should precede the sentence of detention. **R. 56; S. 183; M. 577.**

C. 10 **Q**. A court-martial may make a recommendation to mercy. In what circumstance will it be required?

A. It will usually be required only where the offence is in itself very serious, and where the court, though unwilling to pass a lenient sentence, lest the offence should be considered a venial one, think that owing to the character of the accused or other exceptional circumstances, he should not suffer the full penalty which the offence would ordinarily demand. Occasion for its use may also arise in the cases where a court is left no option as to punishment, i.e., for the offences of scandalous conduct and for murder. **S. 53 ; R. 49 ; M. 51.**

E.C.98 **Q**. A court-martial wishes to bring to the notice of the confirming officer the unsatisfactory way in which one of the witnesses has given his evidence. What would take place?

A. Any report of the kind will be signed by the president and forwarded in a separate document to the confirming authority. It must not be entered on the proceedings or attached to them. **R. 95.**

P.L 09 **Q**. How are the proceedings of courts-martial disposed of after promulgation, and for how long are they preserved?

A. Proceedings of general and district courts-martial are forwarded to the office of the Judge Advocate-General, and preserved for seven and three years respectively. The proceedings of regimental courts-martial are kept until the next inspection, and then sent to the officer in charge of records and preserved with the regimental records for three years. **R. 95 ; K. 595, 1925.**

PC.94 **Q**. Within what time can a copy of court-martial proceedings be obtained? How far would such a copy be admissible as evidence of the facts stated in it before a court-martial?

A. 1. In the case of a general court-martial, seven years, and in the case of any other court-martial, three years.

2. A duly certified copy, equally with the original proceedings, is evidence that the soldier named in the charge has been tried, convicted, and sentenced. The proceedings may also be received as evidence that certain statements were made at the trial, but are not receivable as evidence that the facts stated were true. **S. 124, 165; R. 99.**

Q. What is the rule in respect to the custody and the inspection of the proceedings of a court-martial, when such are required at a trial? S. 90

A. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and the accused respectively, at all reasonable times before the court is closed to consider the finding. **R. 96.**

SECTION XVII.

CONFIRMATION.

P.L. 05 **Q**. Give the authority for the following statement:—"A member of a court-martial cannot act as confirming officer of that court-martial."

A. S. 54.

C. 08 **Q**. Explain the courses open to a confirming authority in the case of findings or sentences which require confirmation.

A.
1. He may send back either finding or sentence or both for revision.
2. He may confirm or refuse confirmation.
3. He may withhold confirmation either wholly or partly, and refer to superior authority.
4. When confirming he may mitigate, remit, commute, or suspend the execution of the sentence.
5. He may vary the sentence if it be informally expressed or be in excess of that authorised by law.
6. In the case of a special finding on alternative charges he will have to decide upon which charge the finding holds good and, if necessary, remit or commute the sentence in accordance with his decision. **S.57; R.51,55,56; K.588.**

S. 89 **Q**. State what happens in the following cases:—The confirming officer (*a*) finds, after promulgation, that the sentence is invalid, (*b*) finds, after promulgation, that the proceedings are illegal.

A. (*a*) The prescribed authority may substitute a valid sentence for one found after confirmation to be invalid, but such substituted sentence shall not exceed in punishment the original invalid sentence.

(*b*) The prescribed authority will direct the record of the conviction to be removed, and the soldier to be relieved from all consequences of his trial. Where time admits of it, reference should be made to the judge-advocate-general. **S. 57; R. 54; K. 591.**

Q. A confirming officer confirms the finding, but not the sentence of a court-martial. State what happens. **S.E 03**

A. The record of conviction remains against the soldier, and carries with it any penalties consequent on conviction. **K. 591.**

Q. State what happens when the confirming officer refuses to confirm the proceedings. **P.C. 06**

A. When there is no confirmation the trial must be treated as null, and the accused must be relieved from all consequences of his conviction, and all record of such conviction must be erased, and the soldier may be tried again. **S. 54; K. 591; M. 36, 53.**

Q. Explain the difference between the powers of "mitigation," "remission," and "commutation" of the sentence of a court-martial as exercised by the confirming officer. **S.E.93**

A. "Mitigation" is the awarding a less amount of the same species of punishment, and is in effect a remission of part of the sentence. Thus a sentence of 42 days' detention could be mitigated to one of 21 days' detention.

"Remission" is the taking away of the whole or of part of the sentence. Thus of a sentence of 56 days' imprisonment, H.L., the whole may be remitted, or 21 days of it, or the H.L. alone may be taken away.

"Commutation" is changing the description of punishment by awarding a less punishment as detention instead of imprisonment, or imprisonment instead of penal servitude, or dismissal instead of cashiering. **S. 57.**

Q. To what extent may the original sentence be altered? **P.C.01**

A. Partial commutation of any one punishment by the substitution for a portion thereof of another punishment is illegal, and a commuted sentence must be less than the original sentence. **S. 57.**

S.E 90 **Q.** A soldier is sentenced to 84 days' imprisonment with H.L. Explain how a confirming officer could commute this punishment.

A. *On active service* the imprisonment could be commuted to *field punishment* when the confirming officer is of opinion that imprisonment cannot with due regard to the public service be carried out.

Otherwise the imprisonment would be commuted to detention, discharge with ignominy, or forfeitures, fines, and stoppages (if the nature of the offence rendered these punishments suitable). **S. 57.**

C. 10 **Q.** Can a sentence of detention be commuted to one of imprisonment?

A. No. A punishment can only be commuted to one lower in the scale of punishment. **S. 44, 57.**

P.C. 95 **Q.** A soldier has been sentenced to penal servitude. Discuss the question as to whether a confirming officer has power to commute this punishment to one year's imprisonment and discharge with ignominy.

A. The confirming authority may "commute such punishment for any less punishment or punishments to which the offender might have been sentenced."

Imprisonment and discharge with ignominy are both less punishments, and they may legally be combined. But the commuted sentence must be less than the original sentence, and the validity of a commutation of this type is liable in some cases to be called in question. **S. 57.**

P.C. 03 **Q.** State the law as to the restitution of stolen property in the case of a soldier convicted of theft by a court-martial.

A. The Army Council, or the officer confirming the court-martial, may order all stolen property, or proceeds of stolen property, found on the offender, to be delivered up to the lawful owner of the property.

Where property stolen has been sold or pawned to an innocent third party, the said authorities may, after the restitution of the property to the lawful owner, order that out of any money found in the possession of the offender, a sum not exceeding the amount of the proceeds of the sale or pawn shall be paid to the said person purchasing or taking in pawn. **S. 75; K. 586.**

Q. In the event of a soldier being convicted of stealing £3, and £1 5s. being found on him, to what amount of stoppage will he be sentenced? P.C. 11

A. 1. The accused would be sentenced to stoppages of £3.
2. The confirming officer may order the £1 5s. to be given up to the lawful owner.
3. If the £1 5s. is restored by order, the accused is placed under stoppages for the balance only of the stoppages awarded by the court. **S. 75; K. 586**

Q. A soldier on active service is tried for stealing a horse, and is convicted. There is little or no chance of the horse being found, as from the evidence at the trial, it appears that the accused exchanged the horse for certain gold tokens, afterwards found in his kit, to a man who has since gone out of reach. Can these tokens be given to the owner of the horse? If so, what authorities have the power to issue the necessary order? P.C. 93

A. 1. Yes.
2. The authority confirming the proceedings of the court-martial, or the Army Council. **S 75.**

Q. Describe the procedure when on re-assembly of a court for revision one of the members is unable to attend. P.L. 02

A. If by the absence of the member, the court is not reduced below the legal minimum, it records the absence together with the reasons given for it, and proceeds with the revision. If, however, the court is reduced below the legal minimum, the president reports the case to the convening officer, and returns the proceedings without any entry thereon. **S. 53; R. 52, 65, 66.**

P.L.02 **Q**. On the re-assembly of a court-martial for revision the president is unable to attend. How would the case be dealt with?

A. The senior member reports the case to the convening officer, who will appoint the senior officer to be president if of sufficient rank, and if the court is not reduced below the legal minimum. Otherwise revision is impossible and the confirming authority must deal with the original proceedings as he thinks fit. **S**.53; **R**.65

P.C.09 **Q**. The sentence is sent back for revision. The Court (*a*) adhere to the finding, but reduce the sentence, (*b*) call additional evidence. Criticise the procedure in both cases.

A. (*a*) No power to revise finding as sentence only sent back for revision.

(*b*) Should not be done, and any such evidence should not be taken into consideration by the court or confirming officer. **R**. 52.

E.C.08 **Q**. State briefly what you know as to the revision of the proceedings of a court-martial.

A. 1. It can only be ordered once.

2. No further evidence is to be taken.

3. Any alteration in the finding necessitates a reconsideration of the sentence, which must in no case be increased. **S**. 54; **R**. 52.

E.C.01 **Q**. Can a court adhere to their finding and revise their former sentence?

A. Yes, but they have no power to increase the sentence originally awarded. **S**. 54; **R**. 52.

E.C.06 **Q**. Describe the course to be pursued by a court-martial when (1) the finding, (2) the sentence is sent back for revision by the confirming officer.

A. The court re-assemble in *closed court* in accordance with the order, and consider the order or memorandum of the ·confirming authority. No further evidence is taken.

1. *Finding.* When the finding is sent back for revision and the court do not adhere to their former finding, they shall revoke the finding and sentence and record a new finding, and if such new finding involves a sentence, pass sentence afresh.
2. *Sentence.* When the sentence is sent back for revision and the court do not adhere to the former sentence, they may pass a new sentence, but cannot revise the finding or increase the sentence originally awarded.

S. 54; R. 52.

Q. A district court-martial has sentenced a warrant officer to six months' H.L. The sentence is sent back for revision. This court revoke the former sentence, and pass one of "dismissal from the service." Give your opinion as to the legality of these sentences. P.C. 99

A. The first sentence is illegal, and the court are right in revoking it, and are justified in passing any legal sentence such as "dismissal." **S. 182; R. 56.**

Q. In reviewing the proceedings of a court-martial the confirming officer considers that a plea offered to the jurisdiction by the accused, which has been overruled by the court, is valid. How should he act? P.L. 07

A. Refuse to confirm the finding of the court. As a result the court will be dissolved and the trial annulled, and the accused may be tried by another court.

S. 54; R 34, 51; K. 591; M. 36.

Q. A confirming officer orders a court-martial to assemble for the revision of their sentence on the ground that it is partly illegal. State what happens. S.E. 03

A. The court re-assembles in closed court, and considers the remarks of the confirming officer, but no further evidence can be taken.

The court would revoke their former sentence and pass afresh the legal portion of the former sentence, and omit the illegal part. **S. 54; R. 52.**

S 01 **Q**. Describe the action to be taken by a confirming officer in the following cases:—

1. He is of opinion that the proceedings are irregular but not illegal.
2. He finds that there is an illegality in such proceedings.

A. 1. If the proceedings can be legally sustained, but an *irregularity has occurred*, and no injustice has been done to the accused, the conviction may be allowed to take effect, but the confirming officer will consider what reduction of the sentence (if any) is due to the accused. The preferable course is, where possible, to send the case back for revision or for another trial.

2. If he has not confirmed the proceedings he will withhold his confirmation. If he has confirmed the proceedings he will direct the record of the conviction to be removed and the soldier to be relieved from all consequences of his trial. **R. 56; K. 591.**

S. 93 **Q**. A soldier is tried on two charges. On examining the proceedings of the court, it is found that the wording of the finding is "guilty of the charge." Advise the confirming officer as to the course to be pursued.

A. The proceedings should be sent back to the court with a letter asking them to explain the meaning of their finding, and the opinion of the court should be made clear by means of a certificate signed by the president and appended to the proceedings. **R. 56.**

P.C. 95 **Q**. On perusing the proceedings submitted to him for confirmation, it appears to the confirming officer that the sentence has been informally expressed. What action should be taken?

A. *Informality*, in the finding and sentence, will, as a rule, be amended by sending back the proceedings for revision. A confirming officer may, however, vary the wording of an informal sentence, and if the sentence be in excess of that authorized by law, may reduce it is a legal amount and then confirm it. **R. 56; K. 591.**

Q. Describe the duties of a confirming officer who is of opinion that the accused has been convicted on hearsay evidence. P.C. 07

A. The proceedings are illegal and the confirming officer will withhold confirmation. If he has confirmed the finding and sentence, he will direct the record of the conviction to be removed and the soldier to be relieved from all consequences of his trial. **K. 591; M. 68.**

Q. Could the prisoner be tried again for the same offence by another court? **E.C. 97**

A. In the case of non-confirmation there has been no trial, and the accused could be tried again (though not customary), but if the proceedings were confirmed and annulled, he could not be tried again. **S. 54, 157; M. 36**

Q. A soldier is tried on two charges; firstly with stealing certain articles; secondly, with receiving the same articles knowing them to have been stolen. The court find the accused guilty of both charges. On reviewing the proceedings what course should the confirming officer adopt? P.C. 03

A. The court should be assembled to revise their finding, and it should be pointed out to them that the charges are alternative and deal with the same offence, and that the accused cannot be guilty of both charges. **R. 43, 52.**

Q. (*a*) Private A., convicted of fraudulent enlistment, was sentenced to 1 year's detention and discharged with ignominy. P.L. 07

(*b*) Private B., convicted of theft, was sentenced to 9 months' detention.

(*c*) Private C., convicted of a second case of desertion, was sentenced to 56 days' H.L.

Comment on these sentences, and state the action you, as confirming officer, would take.

A. (*a*) In ordinary cases the sentence should not exceed 112 days' D. Discharged with ignominy cannot be combined with D. The confirming officer should vary the sentence so that the D. is lessened and the discharge omitted.

(*b*) For a conviction of felony a sentence of H.L. should be given. The confirming officer would confirm, and in a separate minute instruct the court as to the mistake made.

(*c*) Detention should have been given and not H.L. The confirming officer would commute the sentence to 56 days' D. or less. **K. 583.**

P.L.05 **Q**. Under what circumstances can a confirming officer amend the wording of a sentence before confirming it? Give example.

A. 1. If the sentence is informally expressed, he may vary the form so that it should be properly expressed, *e.g.*, a sentence of H.L. under six months, which was awarded in "months," should be expressed in "days."

2. If the punishment awarded is in excess of that authorized by law, he may vary the sentence so that it shall not be in excess of it, *e.g.*, a sentence of 56 days' detention, awarded by a regimental court-martial, would be amended to 42 days. **R. 56.**

P.L.09 **Q**. A soldier of the Regular Forces who enlisted in England is sentenced by a court-martial in India to 18 months' H.L. Where should he undergo his sentence?

A. A soldier sentenced to imprisonment or detention for over 12 months must be transferred to a prison in the United Kingdom. The confirming officer will therefore either reduce the sentence to 12 months or less or cause the transfer to be carried out. **S. 131.**

P.C.95 **Q**. A corporal has been convicted by regimental court-martial and sentenced to reduction to the ranks. The confirming officer's minute of confirmation is as follows: "Confirmed; but I mitigate the sentence to reduction to lance-corporal." Discuss this minute and state what is its effect.

A. The mitigation is illegal. A lance-corporal holds an appointment and not a rank. **S. 184; K. 282.**

Q. State the different cases in which the sentence of a court-martial must be confirmed by a civil authority. P.L. 02

A. 1. Where a court-martial is assembled in a colony and a member of the court becomes confirming officer, and there is no superior officer to refer to, the governor may confirm.

2. Every sentence of death (not on active service) and, *in respect of a civil offence*, any sentence of penal servitude, which is passed in a colony, must be approved by its governor.

3. Sentences of death for treason or murder (not on active service), and penal servitude in respect of *civil offences* which are passed in India, must receive the approval of the Governor-General. **S. 41, 54.**

(All sentences of death on active service, and, *in respect of military offences*, sentences of death and penal servitude in India, and sentences of penal servitude in the colonies, do not require confirmation by the civil power.)

Q. Under what authority is an officer commanding abroad empowered to confirm the findings and sentences of general courts-martial? How far is this power limited? S.E. 08

A. Where the officer is the Commander-in-Chief in India or sometimes the Commander-in-Chief on active service, confirming power is given by warrant without any reservation. Otherwise a sentence on a commissioned officer (other than native) of death, P.S., cashiering, or dismissal, is reserved for the King. **M. 38, 52.**

Q. A confirming authority finds it necessary to comment on the proceedings of a court-martial. How should he do so. S.E. 10

A. Remarks will be separate from the proceedings and communicated in a minute to the members of the court, or, in exceptional cases, made known in the orders of the Command. In no case will he comment on a finding of " not guilty " or upon the inadequacy of a sentence. **K. 589.**

P.C. 00 **Q**. A confirming officer is of opinion that the evidence taken before a court-martial is not sufficient to prove guilt of the offence charged, and that the finding of the court-martial is therefore incorrect. It seems clear, however, that the accused has committed an offence under the Army Act. Describe the course to be pursued?

A. He should refuse to confirm and thereby annul the proceedings. He might then direct that the accused be tried on a fresh charge, or direct his C.O. to deal summarily with the case. **S. 54; K. 591; M. 53.**

S.E. 01 **Q**. A soldier is tried by court-martial for "disgraceful conduct." The G.O.C. is of opinion that the offence committed does not amount to disgraceful conduct, refuses to confirm the finding and sentence, and orders the C.O. of the accused to deal with the case. Comment on the above case.

A. As the proceedings have not been confirmed there has been no trial, and the G.O.C. is justified in dealing as he wishes with the offence committed. See last answer. Also **S. 157; M. 36.**

C. 08 **Q**. A court-martial sentences an offender to H.L. and discharge with ignominy, and the confirming officer decides to remit the latter. Should he take any action in consequence of this remission?

A. He will at the same time commute the sentence of H.L. to detention. **K. 583.**

P.L. 09 **Q**. The proceedings of a court-martial are lost before they are confirmed, and no copy can be procured. May the accused be tried again, and if so what is the effect?

A. Yes. On issue of an order convening the court the finding and sentence of the previous court of which the proceedings were lost, shall be null. **R. 100.**

P.C. 93 **Q**. Who has power to mitigate, remit, or commute a court-martial sentence after promulgation?

A. The Sovereign, the Army Council, the commander-in-chief in India, general officers in command and any officer specially authorized. **S. 57.**

Q. The proceedings of a regimental court-martial were confirmed and promulgated. The C.O. then realized that he had confirmed an illegal sentence. How could the mistake be remedied? P.C. 01

A. Refer to G.O.C. who would remit the sentence. The record of conviction would remain. **S. 57.**

Q. How are the proceedings of courts-martial to be promulgated? P.L. 10

A. A parade is ordered at which all soldiers of the corps are to be present (except those on guard, or otherwise unavoidably absent).

The accused is marched on parade by an escort, and placed so that all can see him.

An officer calls the parade to attention and reads out, so that all can hear, the first paragraph of the proceedings of the court-martial, the name of the accused (he is here made to stand forward and his cap taken off), the charge, the finding, the sentence, and the confirmation.

The accused is then marched back to the guard-room and the parade dismissed. **R. 53.**

Q. The proceedings of a district court-martial are lost between confirmation and promulgation. Give opinion as to course to pursue. S.E. 94

A. The finding and sentence are valid, but no action can be taken to carry out the sentence except after proof by sufficient evidence of the loss of proceedings, of the charge, plea, finding, sentence, and confirmation. **R. 100.**

SECTION XVIII.

CRIMES.

E.C 05 **Q**. Explain how the various military crimes are arranged and classified in Part I. of the Army Act.

A. The principle adopted is that of

(*a*) Grouping together offences of a similar character; and

(*b*) Ranging the various groups as between themselves in a manner intended to impress the soldier with their relative military importance.

Gross misbehaviour in the field.
Mutiny and insubordination.
Desertion, fraudulent enlistment and absence without leave.
Disgraceful conduct.
Drunkenness.
Offences in relation to prisoners.
,, ,, property.
,, ,, false documents and statements.
,, ,, courts-martial.
,, ,, billeting.
,, ,, impressment of carriages.
,, ,, enlistment.
Miscellaneous military offences. **M. 15**.

C. 08 **Q**. What do you understand by the expression "a safeguard"?

A. A *safeguard* is a guard posted by a C.O. for the purpose of protecting property or persons against the operations of his own troops. **S. 6**.

P.L 01 **Q**. Differentiate between a "stableman" and a "sentry." If found drunk away from their posts, with what offences could they be charged?

A. "Stableman" is without arms and is not, as a rule, posted and relieved like a "sentry."

A sentry would be charged with "leaving his post" or "being drunk on his post."

A stableman could be punished for "drunkenness," combined with "absence without leave," or be charged under S. 40. **K. 560.**

Q. Distinguish between the offences of "sedition," "mutiny," and "insubordination." How far would "provocation" affect the last two offences? P.L. 07

A. *Sedition* may be taken as meaning a proceeding falling short of actual mutiny in respect of direct disobedience or resistance, but of a mutinous tendency, and includes any tumultuous or disorderly assemblage, demonstration, or other manifestations for the purpose of subverting or interfering with superior authority—either civil or military.

Mutiny implies collective insubordination, or a combination of two or more persons to resist or induce others to resist lawful military authority.

Insubordination is the mutinous act of an individual, or wilful resistance to lawful military authority.

Provocation is no justification, but its existence would be allowed due weight in considering punishment.

M 16.

Q. Give the sections of the Army Act under which the following would be charged:— S.E. 10

- Private D, when on sentry duty, is found drunk a short distance from his post.
- Bombardier E, hearing that some men of his battery intended cutting up the battery harness, fails to inform his C.O.
- Private G, when sentry over soldiers in custody, surreptitiously gives one of them a pipe and tobacco.

A. D. "Leaving his post before he was regularly relieved." **S. 6 (K).**

E. S. 7 (4). (See charge sheet 17).

G. S. 40. (See charge sheet 72).

C. 10 **Q**. Explain briefly the meaning of the following expressions:—" Offer of violence," " superior officer," " in execution of his office."

A. An *offer of violence* includes any defiant gesture or act, which, if completed, would end in actual violence, but does not extend to an insulting or impertinent gesture or act, from which no violence could result.

Example: A soldier at a barrack-room window, shaking his fist at an officer on parade, does not *offer violence*, but if he aimed at the officer with a loaded rifle he might be charged with doing so.

The term *superior officer*, when used in relation to a soldier, includes all N.-C. officers, but does not include a soldier temporarily placed in a position of authority in the absence of a N.-C. officer. A naval officer on shore, or a nurse at a military hospital, is not a superior officer within the meaning of the act.

An officer or N.-C. officer is in "*execution of his office*" when he is in quarters, or in a position to exercise his ordinary duties of command and supervision. Where an officer doing duty with troops is in plain clothes, it will be necessary to prove that a soldier, charged with an offence against him, knew that he was an officer at the time of assaulting him or disobeying him. **S.** 8.

S E. 92 **Q**. A soldier under your command is charged with being drunk in the streets of Plymouth, and with assaulting a naval officer in uniform. How would you deal with the case?

A. The soldier cannot be charged with " using violence to *his* superior officer," as a naval officer *on shore* is not a *superior officer* within the meaning of the Army Act. He should be tried by court-martial for " an act to the prejudice, etc." If it was apparent that the soldier was sufficiently sober to realize the gravity of his offence, a second charge for drunkenness would be omitted. Under other circumstances, the second charge would be added to the first. **S.** 40, 190.

Q. What is required to sustain a charge of using "threatening or insubordinate language?" P.C .01

A. 1. The particulars of the charge must state the expressions or their substance, and the superior to whom they are addressed.

2. The words must be either in themselves or in the manner or circumstances in which they are spoken, threatening, insulting, or disrespectful.

3. It must reasonably appear that they were intended to be heard by the superior. **S. 8**

Q. A soldier has been remanded for trial by court-martial. On his way to the guard detention room he uses threatening language in regard to the C.O. to the effect that he would kill him when he had the chance, etc. Under what sections of the Army Act might this further offence be charged. S.E 07

A. If addressed to, or in hearing of, the N.-C. officer of the escort charge with "insubordinate language" under S. 8. If it cannot be proved that the language was used to a superior officer charge under S. 40.

Q. Private A, on being warned by the orderly to turn out for picquet duty in half-an-hour, makes a reply implying an intention to refuse, and is at once placed in the guard detention room. Under what section should he be charged? S.E. 09

A. To "disobey a lawful command" it is necessary that actual non-compliance with the order must be proved. By sending the soldier to the guard-room he is deprived of power to carry out the command given him, and he therefore cannot be charged with disobeying it. If the reply were spoken in an insulting and disrespectful way, and accompanied by gestures that showed an insubordinate intent, the soldier might be charged under S. 8 (2) for

Using insubordinate language, etc.,

but under ordinary circumstances he would be charged under S. 40 "for conduct to the prejudice, etc." **S. 9**.

C. 09 **Q**. State briefly the meaning of "lawful command."

A. The following conditions must be fulfilled:—

1. The command must be given by a superior officer who has the right to do so.
2. It must refer to some matter connected with military duty, and be in fact a military command.
3. It must be justified by military law and custom, and not be contrary to civil law.

S 9; **M**. 17

C. 04 **Q**. With the aid of an example show what is meant by a lawful command.

A. A soldier is told by an officer to fetch his horse from the stables.

If the horse were his charger and he wanted to go forth on military duty, the soldier who did not carry out the order would "disobey a lawful command."

If, however, the officer were in plain clothes and wanted his horse only to go out for an ordinary ride, the command is not a lawful military command, and the soldier is not amenable to the Army Act for disobedience in respect of it, though, of course, he might be otherwise punished. **S.** 9; **M**. 17.

P.C.11 **Q**. What essential points is it necessary to prove in order to convict a soldier charged with the offence of disobedience of orders for which the penalty of death can be awarded.

A. It must be proved that there was a

1. *Wilful* defiance of authority.
2. The command was *lawful*.
3. The command was given *personally*.
4. The command was given by a *superior* officer in the *execution of his office*. **S**. 9

P.C.04 **Q**. Private disobeys an order given him by his colour-sergeant. The C.O. wishes to deal with the case summarily. What is the procedure.

A. As the offence falls under S. 9 (1) the C.O. must apply to superior authority, in a letter stating the circumstances of the case, and accompanied by the soldier's conduct sheets. **K. 487.**

Q. Give the section of the Army Act applicable to S.E.06
the following offences:—

Private A., when ordered to the guard-room, lies down on the ground, and, refusing to move, has to be carried.

Private B., when a defaulter, enters the canteen at a prohibited hour.

A. (*a*) S. 10 (3).
(*b*) S. 11, if the order is a regimental or garrison one. S. 40 if the restriction laid down in K.R. has not been re-published.

Q. (abbreviated). It is desired to bring Sergeant C. 09
Jones to trial for neglect to obey K.R. 459, which has not been embodied in the standing orders of his battalion. Under what section should the charge for gambling be framed?

A. **S. 40.**

Q. How do you discriminate between "desertion" E.C 11
and "absence without leave."

A. ***Desertion*** is constituted when a man absents himself with the *intention* either not to return to His Majesty's service at all or to escape some particular important service, such as foreign service, or service in aid of the civil power.

"***Absence without leave***" is a short absence from military supervision, unaccompanied by disguise, concealment, or other suspicious circumstances. **M. 18.**

Q. Private A. belongs to a draft for South Africa, E.C.01
escapes being embarked at Southampton Docks by hiding himself. With what offence would he be charged?

A. "*When under orders for active service, deserting His Majesty's service.*" **M. 18, 548.**

E.C.11 **Q.** The company to which Private A belongs is ordered to assist the civil police in quelling a riot. Private A conceals himself in barracks, and thus evades duty with his company. Of what offence would a court-martial be justified in convicting Private A? Give your reasons.

A. "Deserting His Majesty's Service."

The court is justified in presuming an intention to escape the important service on which he was ordered, and in convicting him of desertion. **S.** 12; **M.** 19.

S E 03 **Q.** Explain by example why neither *time* nor distance is a necessary criterion of desertion.

A. 1. A soldier on a drunken bout might be absent a *long time* and yet have every intention to return.

2. A soldier quitting barracks in plain clothes, though he has gone *no distance* yet evidently does not mean to return. **M** 18.

P.C.93 **Q.** When is a man not liable to be tried for desertion?

A. When a soldier has served continuously in an *exemplary manner* for not less than three years in any corps of His Majesty's regular forces, he shall not be tried for an offence of desertion (other than desertion on active service), which was committed before the commencement of such three years. **S.** 161.

S.E.07 **Q.** Private A. B. is reported to be absent without leave, and is believed to have deserted. What action should be taken?

A. 1. An inventory of his equipment, clothing and kit to be at once taken.

2. Descriptive report to be sent without delay to Editor, "Police Gazette."

3. Copies of above report to police of locality, nearest depot, and any place the man is likely to have gone to.

4. If not taken into custody, after the expiration of 21 clear days a court of inquiry under S. 72 will be held. **K. 514.**

Q. In what circumstances would it be permissible to charge desertion against a soldier who had quitted his corps and enlisted in another? C. 09

A. If it was clear that he quitted his corps to avoid a particular service, such as service abroad. **M. 19.**

Q. What must be proved in order to establish an offence of "attempting to desert"? C. 10

A. Some act, which, if completed, would constitute desertion, must be proved. A mere intention to desert is not sufficient. **M. 19.**

Q. A man belonging to the Army Reserve fails to appear when called out for permanent service. In what manner can he be dealt with? S E. 05

A. He can be tried by a military court either for desertion or absence without leave according to circumstances or can be fined by a civil court up to £25, and in default of payment be sentenced to imprisonment. **R.F.A. 15.**

Q. "Attempting to desert." Illustrate by example how the above offence might arise. P.C 06

A. A soldier caught in the act of climbing over a barrack wall in plain clothes is a good example. He has not deserted as he has not left the barracks, but the attempt to desert is clearly shown by his climbing over the wall in the costume of a civilian. **S. 12; M. 19.**

Q. In what manner does the punishment for "attempting to desert" differ from that which may be awarded for "assisting to desert"? Does a conviction for these crimes entail the forfeitures consequent on a conviction for desertion. S. 93

A. 1. *Attempting to desert.* Punishment the same as for desertion.

Assisting to desert. Punishment, imprisonment.

2. No. The Pay Warrant refers only to desertion. **S.** **12, 14.**

P.L. 04 **Q.** Explain how a soldier on furlough can desert, and give an illustration.

A. A man on furlough is still under orders, and if he takes any action which prevents orders reaching him he shows the intention of not returning.

Ex. A soldier on furlough for a month is found in plain clothes on board a ship bound for South America with a passenger ticket in his possession. **M.** **19.**

P.C. 91 **Q.** What *consequences* are entailed, both under the Army Act and the Royal Warrant for Pay, etc., by a conviction for desertion?

A. A soldier convicted of desertion forfeits the whole of his prior service and, consequently, all pension, good-conduct badges, pay, and deferred pay earned by such service. He also forfeits all medals and decorations (other than the Victoria Cross), together with the annuities and gratuities belonging to them. He is further liable to general service in commutation of other punishment. **S.** **73, 79 83.**

P.C. 07 **Q.** Give a brief summary of the regulations as to the treatment of a man who surrenders himself as a deserter at a military station in England.

A. 1. If a deserter surrenders himself to any portion of *his own corps*, and evidence of identification is immediately available, he may be at once taken into military custody.

2. If a soldier of the regular forces *in uniform* surrenders himself at a military station, and there is ground for supposing his confession is true, he may be detained in military custody pending inquiry—a written confession being obtained from the man. If the confession is true he will be dispatched to his unit under escort. If the confession is false, he may be proceeded against before the civil power.

3. If there is no ground for supposing a person surrendering is a deserter, he is handed over to the civil power.
4. In all other cases a person *not serving* must be duly committed as a deserter by the civil power before being taken into military custody. **K. 517.**

Q. You are in command of a detachment when a man in uniform surrenders himself as a deserter from another regiment. What steps are to be taken? P.C. 10

A. See last answer (2), **K. 517.**

Q. A man surrenders to a Regular unit stating that he deserted four years ago. On investigation witnesses prove his statement to be false. How may he be proceeded against? P.L. 07

A. He is handed over to the civil power and may be charged under S. 152 of the Army Act. In ordinary cases he would be summarily punished by a magistrate as a rogue. **K. 517.**

Q. A man in plain clothes presents himself at the guard-room of a battalion stationed at Dover, stating he is a deserter from the 1st ———shire Regiment, stationed at Cork. What action should be taken? P.C. 09

A. 1. Hand him over to the police, in order that he may be brought before a court of summary jurisdiction, and duly committed as a deserter.

2. Send him forthwith before a court of summary jurisdiction, to be committed as a deserter, but he is not to be detained in military custody further than is necessary for this purpose. **K. 517.**

Q. A man dressed in plain clothes surrenders himself to the 1st Battalion Sussex Regiment. He states that he deserted from the 2nd Battalion Sussex Regiment, and evidence of his identity is immediately available. What action would you, as C.O., take? P.L. 09

A. Take into military custody; apply to former battalion for particulars of service, identifying witnesses, etc. (A.F.B. 123), and submit for disposal the case to the officer who has power to try it by district court-martial. **K. 517, 521.**

P.L.05 **Q**. A recruit in the Yorkshire Regiment states that he is a deserter from the Royal Artillery. Comment on the statement and describe the action to be taken.

A. (*a*) Under ordinary circumstances he is not a deserter, but an absentee who has fraudulently enlisted.

(*b*) 1. The C.O., after recording the prescribed particulars of the soldier's present service in Army Form B 123, will forward this form (with a view to the details as to former service and names of witnesses to identification being obtained) to the officer in charge of R.A. records.

2. The soldier will be required to sign the authorized form of confession of fraudulent enlistment.

3. On completion of the necessary evidence the case will be referred to the general officer commanding, who will decide as to

1. Whether the soldier shall be tried by court-martial.

2. Whether his trial may be dispensed with by order.

3. As to the corps in which the man shall serve.

(If evidence as to the truth or falsehood of the soldier's confession cannot be at once obtained, a record of the confession shall be entered in the regimental books, and the soldier will return to his duty until legal proof is available.) **K. 479, 521, 522, 542.**

Q. Under what circumstances can the military authority decline to take over a man committed as a deserter by a civil court of summary jurisdiction? P C.01

A. 1. In the event of the soldier not being identified or in cases of false confession of desertion.

2. In cases *abroad* where there is no doubt as to the identity of the soldier, but it is inconvenient to take him into military custody by reason of distance or lack of immediate evidence, he may be discharged from civil custody with or without a protecting certificate according to whether his services as a soldier are not required or are desirable. **K. 517, 519.**

Q. How may a person who falsely represents himself to be a deserter be punished? P.C. 99

A. A soldier who makes a false statement to this effect may be tried under S. 27, but in ordinary cases the offender is handed over to the civil power, and is liable on summary conviction to three months' H.L. **S. 154.**

Q. Point out the extent to which the civil power can deal with offences in connection with enlistment and desertion. P.L.02

A. 1. Unlawful Recruiting, Fine up to £20. **S. 98.**

2. False answer on attestation, H.L. up to 3 months. **S. 99.**

3. Pretending to be a deserter, H.L. up to 3 months. **S. 152.**

4. Inducing soldiers to desert, H.L. up to 6 months. **S. 153.**

Q. What constitutes fraudulent enlistment? P.C. 01

A. Fraudulent enlistment is constituted when a person belonging to the regular forces or who is on service as part of the regular forces, without fulfilling the conditions enabling him to enlist, enlists as follows:—

A soldier in the regular army, A man in the Territorial Force when embodied, A reserve man called out on permanent service,	enlists in	Regular forces, Reserve forces. Territorial Force, Royal Navy. Forces raised in India or a Colony.

S. 13.

P.C.01 **Q**. Explain the position of an offender who has earned exemption from trial by reason of exemplary conduct.

A. He has deliberately entered into a new contract, to which he will be held, and will not reckon any previous service. **S. 161.**

P.L9 6 **Q**. A soldier, after having served four years in the Yorkshire Regiment in an exemplary manner, confesses that he fraudulently enlisted into it. Describe the action to be taken, giving your authority.

A. The C.O. for the purposes of record has Form B 123 filled up, and reports to the general commanding that exemption from trial has been earned by exemplary service. The soldier will be held to serve on his last attestation. **K. 521, 523, 525.**

P.C.93 **Q**. If a man is tried for fraudulent enlistment, can a second charge for obtaining a free kit be preferred against him?

A. No; but to the particulars of the charge for fraudulent enlistment should be added, "thereby obtaining a free kit value ," (provided that not more than three years have elapsed since the commission of the offence). **S. 13; M. 548.**

S.E 07 **Q**. Describe the circumstances under which a soldier might commit the offence of "attempting to fraudulently enlist." Under what section of the Army Act would he be charged?

A. (1) A soldier on furlough in plain clothes offers himself as a recruit, but is refused on some grounds, such as that it is Sunday, or that he is too old, or that recruiting is stopped for the particular corps he wishes to enter. The soldier has clearly not fraudulently enlisted, but he has attempted to do so.

(2). All "attempts" unless specifically provided for are triable under S. 40. **M. 23.**

Q. (*Desertion*). Point out the conditions and peculiarities that exist in respect of its trial and punishment by court-martial. **E** C.08

A. *Trial.*—For *desertion on active service* a man can always be tried.

For *desertion not on active service* (and for *fraudulent enlistment*) a man can also be always tried, unless he has served continuously in an exemplary manner for three years since the commission of the offence.

Punishment.—Desertion on active service—death.

Desertion not on active service (1st offence, H.L. or D.
(*or Fraudulent Enlistment.*) 2nd offence, P.S.

(A man who is convicted of this crime or who confesses himself to have been guilty of it and has his trial dispensed with (or who has fraudulently enlisted but is not tried owing to three years' exemplary service) *forfeits all service* prior to such conviction, dispensing order, or enlistment.) **S. 12, 13, 161.**

Q. In what circumstances would it be permissible to charge desertion against a soldier who had fraudulently enlisted? P.L. 11

A. When the enlistment was made for the purpose of avoiding some particular important service, or if circumstances made it clear that when he quitted the Service he did not intend to return, but changed his mind. **M. 20.**

C. 04 **Q**. A soldier absents himself from the Yorkshire Regiment on the eve of embarkation for India, and a month later fraudulently enlists in the Essex Regiment. What is the maximum punishment that can be awarded? Give reasons.

A. Two years' H.L. or D. If a soldier deserts and while still in a state of desertion, fraudulently enlists, then, although he may be convicted both of the desertion and the fraudulent enlistment, he cannot be sentenced to penal servitude, as the desertion was his *absence* "*next before the fraudulent enlistment.*" **S. 12, 13.**

P L 07 **Q**. Private X. deserts, and while in a state of desertion fraudulently enlists.

Private Y., previously convicted of fraudulent enlistment, deserts.

Private Z. deserts when under orders for active service.

Explain how far the circumstances affect the punishment to which each offender is liable.

A. Private X. cannot be sentenced to P.S., as his desertion was his absence "next before the fraudulent enlistment."

Private Y. can be tried for desertion, and as the fraudulent enlistment is a previous case, can be sentenced to P.S.

Private Z. has rendered himself liable to a sentence of death. **S. 12, 13.**

P.C. 11 **Q**. What penalties can be awarded by a General Officer when dispensing with the trial of a soldier who has signed a confession that he was a deserter.

A. In the order dispensing with trial it is stated—

1. That a confession of desertion has been signed by the offender.
2. That trial is dispensed with.
3. That, instead of trial, the offender shall suffer the same forfeitures and deductions as if he had been convicted of desertion by a district court-martial (with any exceptions named).

4. That the offender is ordered to suffer such deductions of pay as shall make good loss of kit.

The order made does not affect the forfeiture of all prior service towards discharge, but may cause to be remitted any other forfeitures consequent on conviction of desertion which are laid down in the Pay Warrant.
S. 73, 79; Army Form, A. 46.

Q. Distinguish between the offences of "fraudulent enlistment" and "false answer on attestation." **P.C. 10**

A. Fraudulent enlistment is an offence of illegal enlistment that can only be committed by a soldier of the regular forces, or a person in a similar position (such as a man in the Territorial Force, when embodied, or a reserve man called out on permanent service), who, without having fulfilled the proper conditions, enlists in the Regular, Reserve, Territorial or Colonial Forces, or enters the Royal Navy.

False answer on attestation is a minor offence which arises when a person not in the position of a soldier of the regular forces (such as a civilian, a reserve man not called out, etc.) makes a false answer on being enlisted in a military force.

Example.—A soldier in the Royal Artillery who absents himself and enlists in an Infantry Regiment commits the offence of fraudulent enlistment. He could be charged with false answer if he gave a false answer to any question put to him on being attested for the Royal Artillery. **S. 13, 33.**

Q. How does the offence of making a false answer on attestation arise? What documentary evidence is always necessary in order to prove this offence? **C. 93**

A. 1. *False Answer.*—When a person wishes to enlist he is brought before a justice of the peace to be attested, and is asked the several questions printed on the attestation paper. He signs a declaration on the paper that the answers he has given are correct, and takes the oath of allegiance. The act of attestation makes the person subject to military law, and he, therefore, can be tried by court-martial for making a wilfully false answer to any questions set forth in the attestation paper.

2. *Attestation Paper.*—Two attestation papers are signed by the person enlisting, and one of these must be produced as evidence of the answer that he has given. A copy of an attestation paper is not in this case admissible. **S. 33, 99, 163.**

P.L.95 **Q**. Certain officers are authorized by the Recruiting Regulations to attest recruits. How is a recruit punished who gives a false answer on being attested by such officers? Quote your authorities.

A. He can be tried either by a military or civil court for making the false answer. An officer authorized to attest recruits is deemed to be included in the expression "justice of the peace." **S. 33, 99.**

S. 04 **Q**. A soldier is charged with making a false answer on attestation in respect of his age. The prosecutor produces a certificate of birth, and connects the accused with it by a letter. Comment on the value of this evidence and point out the difficulty of proving the wilful falseness of such a statement.

A. The birth certificate is proof that a child of a certain name was born in a certain year, but the letter is not admissible in evidence. To connect the man with the child requires a chain of evidence not always easy to obtain.

It is impossible to prove that a man knows his own age, and therefore he cannot be convicted of making a wilfully false answer in reference to it. A charge of "false answer" with reference to age should never be made. **S. 33.**

E.C.08 **Q**. A man enlists in the Lancers on 4th July, 1904, and on 1st August, 1907, is discovered to have previously served in, and been discharged as medically unfit from, the Artillery. He denied his former service on enlistment in the Lancers. How should the case be disposed of?

A. He has been guilty of false answer on attestation, but by reason of the three years limit cannot be tried or punished for the offence, and the case should be reported to the War Office. **S. 33, 161.**

Q. Y enlisted in the Royal Garrison Artillery on 21st August, 1906. On the 3rd April, 1909, it is discovered that he had previously been dismissed from the Navy as "objectionable." Under what section is he liable to be tried? P.L.09

A. S. 33. (See note to section).

Q. Private B of the —— Regiment, in South Africa, confesses to having enlisted while belonging to the Army Reserve. The case is disposed of by the G.O.C. What becomes of Private B, and to whom is the report of the disposal sent? P.C.

A. Whether punished or not, he is held to serve on his last attestation. Report of the disposal is made by the C.O. to the officer in charge of records of the man's previous corps, who will notify the accountant concerned. **K. 522.**

Q. Explain why a man who on enlistment conceals the fact that he has been "discharged with disgrace" is not charged under S. 33. E.C.04

A. Because S. 32 deals with this more serious offence, and the punishment usually awarded is more severe than for an ordinary false answer.

Q. Private B. is recognised as a deserter from the Navy. As a C.O. deal with the case. P.C 04

A. 1. He will record on Army Form B 123, the prescribed particulars of the accused's present service, and forward it to the secretary to the Admiralty, asking whether it is desired to claim him.

If not claimed by the Naval authorities the offender will be tried under S. 33, and after punishment retained in the regiment. **K.** 521.

P L. 01 **Q**. A soldier of the Regular Forces is discovered to have improperly enlisted while belonging to the Army Reserve, and further to have drawn reserve pay since his re-enlistment. Under what sections of the Army Act would he be charged?

A. S. 33.

C. 08 **Q**. (*a*) Private A., 1st Bn. Berkshire Regt., absents himself and enlists in Warwickshire Regiment.

(*b*) Private B., 13th Hussars, confesses to having been dismissed with disgrace from the Royal Navy.

(*c*) Private C., Cheshire Regiment., is identified as having served in the Welsh Fusiliers, and as now belonging to the Army Reserve.

Under what sections of the Army Act should they be charged?

A. (*a*) S. 13.
(*b*) S. 32.
(*c*) S. 33.

C. 09 **Q**. Give statement of offence under which the following offenders would be dealt with:—

Private Z.—Apprehended while climbing over a barrack wall in plain clothes.

Private X.—Striking Private W in the canteen.

Private Q.—Confesses desertion from Navy and 10th Hussars.

Sergeant S.—Striking a recruit on parade with a cane.

Corporal M.—Disorderly conduct in town, and striking a police constable.

A. Z. *Attempting to desert H.M. Service.* **S. 12.**

X. *Conduct to the prejudice, etc.* **S. 40.**

Q. *Fraudulent enlistment* (into present corps). **S. 13.**

S. *Striking a soldier.* **S. 37.**

M. *Striking a person in whose custody he was placed.* **S. 10** or under **S. 40.**

Q. Under what sections does each of the following offences fall?— P.L. 11

1. A soldier of the Regular Forces enlisting into the Special Reserve.
2. On application being made to him, refusing to assist in apprehension of a soldier accused of a civil offence.
3. Refusing to make a report it was his duty to make.

A. 1. S. 13.
2. S. 39.
3. S. 26.

Q. The following cases are brought before a C.O. on 1st June, 1907. Under what sections are they tried by court-martial? P.C. 07

(*a*) Private A. has confessed desertion from another regiment, and making away with kit, on 1st January, 1904.
(*b*) Private B. has confessed that he deserted from the Navy in 1905.

A. (*a*) Under S. 12 or S. 13, or both, but usually under S. 13. No charge in respect of kit, owing to three years' limit.
(*b*) S. 33, but reference must first be made to Admiralty.

Q. Under what section of the Army Act would the following offences be tried? C. 05

(*a*) A man discharged with ignominy from an infantry regiment enlists in the Royal Artillery.

(*b*) A soldier is detected while making an attempt to break out of barracks.

A. (*a*) S. 32.
(*b*) S. 40.

P.L. 06 **Q**. What offence is committed by—

(*a*) An Army Reservist who enlists in the Foot Guards?

(*b*) A private of the Army Service Corps who enlists in the Navy?

A. (*a*) False answer on attestation. **S. 33.**
(*b*) Fraudulent enlistment. **S. 13.**

P.L. 06 **Q.** What offence is committed by a soldier who has given a false answer as to age on attestation?

A. A false answer as to age, as a rule, should not be made the subject of a charge. **S. 33.**

P.C. 08 **Q**. Under what sections of the Army Act would the following offences be charged?

(*a*) A soldier in the Regular Army enlists in the Territorial Force.

(*b*) A soldier procures a prolongation of furlough by means of a false statement.

A. (*a*) S. 13.
(*b*) S. 27 (4).

09 **Q**. Comment on the following case:—A man who has been discharged from the Regular Forces enlists as a Special Reservist.

A. There is no objection to such a man enlisting (if not discharged with ignominy), provided he fulfils the recruiting conditions.

P.L. 96 **Q**. The offence of making a false answer on attestation can be dealt with either by a military or civil court. Under what circumstances would the offender, as a general rule, be brought before a civil court?

A. When the soldier's discharge is to be effected in consequence of his offence. **K. 522.**

Q. To what persons should a soldier apply for an extension of furlough in urgent cases? Under what section of the Army Act would a soldier be charged who obtains an extension by false pretences? E.C.05

A. 1. (*a*) To the nearest staff officer.

(*b*) To the C.O. of any unit or detachment of the regular army, or (if none of these be within convenient distance)

(*c*) To a justice of the peace. **S. 173; K. 1312.**

2. S. 27 (4).

Q. Explain the procedure on the part of the justice (above mentioned). P.C.05

A. The extension shall be certified by letter to the C.O. of the soldier, if known, and if not, to the Army Council. **S. 173.**

Q. Under what circumstances can a soldier's furlough be extended by a person who is not an officer? P.L.00

A. The furlough of a soldier can be extended for one month by any J.P. on account of sickness or other casualty, if there is no C.O. of troops or staff officer within convenient distance. **S. 173; K, 1312.**

Q. What action would be taken by his C.O. if he obtained an extension of furlough under false pretences. P.C.07

A. Either deal with summarily or send for trial under S, 27 (4).

Q. Define breaking out of barracks. P.L.01

A. Quitting the confines of the barracks at a time when a soldier has no right to do so; and it is immaterial whether the offence was managed by violence, stratagem, disguise, or simply by walking past a sentry unnoticed. **S. 10.**

Q. Private A. parades with defaulters at last post, and at 11.30 p.m. is arrested in the town. Give section under which he would be tried. P.L.04

A. S. 10 (4).

P.L 00 **Q**. A soldier is absent without leave. How does the fact that his absence was involuntary affect his punishment?

A. The C.O. will exercise his discretion as to awarding punishment, but if the soldier is absent over six hours he will necessarily forfeit pay for the period of his absence. In special cases, such as prisoners of war, the pay may be restored. **S. 138.**

P.C. 03 **Q**. A soldier is found beyond the limits of a camp with a pass, the signature to which has been forged. How would he be charged?

A. Under S. 15 and S. 40 (charge sheet 75).

P.L. 03 **Q**. Distinguish between "scandalous conduct," "disgraceful conduct," and "conduct to the prejudice of good order and military discipline."

A. Scandalous conduct is only charged in the case of an *officer*, and the offence, whether it be of a military or social character, must be of a nature to reflect so much discredit on the officer or his corps that his removal from it is a matter of necessity.

Disgraceful conduct, in a general sense, includes all offences under S. 16, 17, 18, but is only charged against *soldiers* who commit an offence of a "cruel, indecent, or unnatural kind."

Conduct to the prejudice, etc., may be charged against *any person* subject to military law, and the offence must essentially be of a character tending to infringe military discipline. **S. 16, 17, 18, 40.**

S.E 03 **Q**. Illustrate the distinction between embezzling, fraudulently misapplying, and stealing.

A. 1. *Stealing* is the fraudulent taking of any movable property out of the possession of any person without that person's consent, with the intention of permanently depriving that person of the property. Example: A pickpocket.

2. *Embezzling* under the Army Act is committed where one entrusted with the care or distribution of public or regimental money or property, and being thus in lawful possession of it, appropriates it to the use of himself or of some person connected with him. Example: A pay-sergeant.
3. *Fraudulent misapplication* is constituted when a person employed in the public service of His Majesty fraudulently converts any property or money entrusted to him, by virtue of such appointment, to any other service than the public service. Example: A pay sergeant receives from a soldier money to put in savings bank and keeps it himself.

S. 18; M. 100, 101, 102.

Q. The word "embezzlement" has one meaning in trials under S. 41, and another under S. 17. Give the definitions with an example. P.C. 04

A. In ordinary law the offence consists in the fraudulent appropriation by a servant of property belonging to his master of which he has possession under circumstances which constitute such possession the possession of the servant and not of the master. Example: A shop assistant takes £5 from a customer, and instead of putting in the till spends it on himself. In the case of S. 17 the definition is similar, but the servant must be in a position of trust in relation to *public or regimental property*. Example: A pay sergeant makes away with the money entrusted to him for paying the company. **S. 17; M. 101.**

Q. Distinguish between embezzlement and theft. P.L. 03

A. In the case of embezzlement the property embezzled has come *legally into the possession* of the offender who is in a position of trust and acting in the capacity of *clerk or servant* to the person defrauded. In the case of larceny, the property stolen is taken and carried away from its lawful owner *without his consent*, and with felonious intent, or is fraudulently converted by a bailee who has custody of property but no real possession of it.

M. 100, 101.

S.E 05 **Q**. What evidence is necessary to support a charge of obtaining goods under false pretences?

A. 1. That the goods have been obtained by the pretence.

2. That the pretence is a false one.

3. That there is a fraudulent intention of depriving the owner permanently of his goods.

M. 102.

P.L 94 **Q**. In the Army Act a number of offences are included under the general heading of "disgraceful conduct." Enumerate the cases in which the statement of an offence in the charge-sheet would be headed by the words "disgraceful conduct."

A. Disgraceful conduct of $\left\{\begin{array}{l}\text{a cruel,}\\ \text{indecent,}\\ \text{unnatural}\end{array}\right\}$ kind.

C. 98 **Q**. How would the statement of the offence be worded in a case of theft from (1) a soldier, (2) a civilian?

A. 1. "Stealing goods, the property of a comrade."

S. 18.

2. "Committing a civil offence, that is to say, stealing." **S. 41.**

P.L. 05 **Q**. Why is theft from a comrade usually tried by a military court?

A. Soldiers, in the daily routine of barrack life, leave their property about, trusting to the honour of their comrades. The stealing of such property is peculiarly disgraceful, and demands the severe punishment that would be inflicted by court-martial under S. 18. If no fraudulent intent is disclosed the offence of improper possession would be charged under S. 40.

M. 20.

C. 07 **Q**. Point out the precautions to be taken before charging a soldier with the offence of stealing from a comrade.

A. An intention to steal is essential. Merely taking an article belonging to another is not criminal. Evidence to be taken as to any custom of borrowing, or exchanging articles, and as to articles being without name or mark, or being taken by mistake. **M. 20.**

Q. A soldier steals a watch and subsequently pawns it. How would he be charged before a court-martial? Under what circumstances is it possible to recover the watch and return it to its owner? S.E. 02

A. He would be charged with the theft of a watch of a certain value. On restitution of the watch to the owner the confirming officer may order that money found on the offender up to the amount of the pawn may be given to the pawnbroker. **S. 75; K. 586.**

Q. Give the section of the Army Act which would be applicable to the following offences:— S.E 06

Private C., when in hospital, steals the watch of a nurse.

Private D., when an officer's servant, pawns his livery.

A. C. . . . S. 41.

D. . . . S. 18 (4). The livery is worn by the servant on behalf of his master, and is considered to be the possession of the master. Hence the servant or bailee by fraudulently misappropriating it commits theft. **M. 101.**

Q. Three soldiers are being tried by a district court-martial, of which you are president— S. 91

(*a*) For theft from a comrade.
(*b*) For desertion.
(*c*) For wilfully injuring private property.

The accused severally plead guilty. It would be your duty, before accepting these pleas, to explain to the offenders the facts which such pleas admit. What are such facts in each of the above cases?

A. (*a*) 1. That the property belonged to the comrade.
2. That it was fraudulently taken and carried away.
3. That it was taken without the consent of the owner, and with the intention of permanently depriving him of it.

(*b*) 1. That the accused was absent without leave for the term stated in the charge.

2. That the accused absented himself with the *intention* of not returning to the service (or of escaping some important service, such as active service, embarkation for foreign service, service in aid of the civil power).

(*c*) It must be made clear that the injury done by the accused was done *wilfully*, and not by accident or neglect. **S. 24; M. 18, 100.**

E.C. 06 **Q**. Under what section of the Act would the following offence be tried? Private C. is accused by a civilian of having stolen a sovereign from him and with refusing to repay other monies lent him.

A. He could be tried for the theft of the sovereign under S. 41.

He could not be tried by court-martial for refusing to repay money lent him.

P.C. 98 **Q**. Under what sections of the Army Act would each of the following cases be tried:—

(*a*) An Infantry recruit discovered to have been previously dismissed with disgrace from the Navy?

(*b*) Using bad (not insubordinate) language to his C.O.?

(*c*) Theft from a comrade?

(*d*) Theft from a civilian?

(*e*) A bandsman not taking proper care of the instrument in his charge?

A. (*a*) S. 32.
(*b*) S. 40.
(*c*) S. 18.
(*d*) S. 41.
(*e*) S. 40.

P.C. 07 **Q**. Under what sections of the Army Act would the following offences be charged?—

1. A man discharged from a cavalry regiment as "incorrigible and worthless" enlists in an infantry regiment.
2. A soldier is found drunk in a public-house which is "out of bounds."
3. A soldier trying to get out of barracks is caught in the act of climbing the barrack wall.
4. A soldier groom illtreats the charger of an officer.

A. 1. S. 32.
2. S. 15.
3. S. 40.
4. S. 24.

Q. If a superior officer, knowing a man to be drunk, out of good nature allowed him to proceed with the duty for which he is being inspected, or if, through carelessness, he passed a man as sober when he was not sober, and it becomes desirable to try the man, upon what charge should he be arraigned? **S.E.91**

A. He would be tried for drunkenness and, in awarding punishment, should not be treated as having been drunk on duty. **M. 22.**

Q. Under what circumstances is a private soldier liable to be tried by court-martial for the offence of drunkenness? **P.L.92**

A. A court-martial has jurisdiction to try any offence of drunkenness, but C.O.'s are directed to deal summarily with certain cases of simple drunkenness. The practical result is that a soldier is only liable to be tried by court-martial for drunkenness when—

1. It was committed on active service or when on or for duty.
2. It is a *simple* case, but the offender has been guilty of drunkenness on four previous occasions within the preceding twelve months.
3. The soldier has elected to be tried by court-martial instead of submitting to a summary award of his C.O. **S. 19, 46; K. 509.**

P.C. 01 **Q.** What constitutes the offence of "making away with"?

A. *Making away with*, whether by pawning, selling, destroying or otherwise, applies only to goods in a man's own possession, and differs from *stealing* the property of another, or *embezzling* the property of another that he holds in trust. **S. 24; K. 562.**

P.C.01 **Q.** How would the following offences be dealt with?

1. A private soldier ill-treats another private soldier.
2. A hospital orderly pawns medical comforts.

A. 1. Punished summarily or under S. 40.
2. Tried under S. 18 (4).

P.C.06 **Q.** Under what sections of the Army Act would the following offences be tried?

(*a*) A soldier in the Regular Forces is found serving in a Colonial levy raised by the Natal Government.

(*b*) A soldier, who is a defaulter, is stopped at the barrack gate when attempting to leave the barracks.

(*c*) A sergeant drilling recruits strikes one of them with a cane.

(*d*) A stable-man is found asleep in a stable.

A. (*a*) S. 13.
(*b*) S. 40.
(*c*) S. 37.
(*d*) S. 6 (if properly posted), otherwise S. 40.

P.C.94 **Q.** Under what sections of the Army Act would the following cases be tried?

(*a*) A provost-sergeant sends in a written report which is found to contain a false statement.

(*b*) A witness (at a court-martial) makes a false statement as to a material point.

(*c*) A recruit makes a false statement in reply to one of the questions put to him on attestation by the Justice.

A. (*a*) S. 25.
(*b*) S. 29.
(*c*) S. 33 or 99.

Q. Under what sections of the Army Act would the following offences be tried? C. 05

1. A. Breech action of rifle damaged and no satisfactory excuse.
2. B. Stealing a coat hanging at the door of a shop in a town.

A. 1. S. 24. "Wilfully injuring his arms."
2. S. 41. The coat is the property of a civilian, and, therefore, S. 18 is not applicable.

Q. Under which sections of the Army Act would the following offences be charged?— P.C. 09

(*a*) When in hospital from a broken ankle a soldier walks about more than he is told he ought to, and thereby delays his recovery.

(*b*) A soldier attempts to commit suicide.

(*c*) A person interferes with the recruiting of H.M. Regular forces.

A. (*a*) S. 18 (3).
(*b*) S. 38 (2).
(*c*) S. 98 (4).

Q. Under what sections of the Army Act would the following offences be charged? P.L. 01

(*a*) A soldier strikes a N.C. officer.
(*b*) A N.C. officer strikes a soldier.
(*c*) A soldier strikes a soldier.

A. (*a*) S. 8.
(*b*) S. 37.
(*c*) S. 40.

Q. A private soldier, while in hospital, confesses to the surgeon that he has deserted from another regiment. This statement is afterwards shown to be false. Is the man liable to be tried by court-martial for making this false statement? Give your authority. A. 09

A. No. A soldier could be charged with "falsely stating to his C.O. that he was guilty of desertion," but for telling a falsehood to the surgeon the soldier might be summarily punished. **S. 27, 40.**

P.C. 01 **Q**. State the law as to a soldier making false statements to his C.O.

A. A false statement which does not come within the exact terms of S. 27 would be punished under S. 40 or summarily, but a statement made by an accused in his defence, even if false, is not an offence.

P.C. 00 **Q**. Under what section of the Army Act would the following offence be dealt with:—An officer, during an examination, copies the work of another officer. He has signed a certificate that he has not received any assistance during the examination beyond that which is sanctioned.

A. S. 25.

S. 96 **Q**. Give a definition of forgery as a criminal offence.

A. Forgery consists in knowingly making a false document which is on the face of it valid, with the *intention* to defraud or injure.

In some cases it is not necessary to prove a fraudulent intention. The fact that a false document has been made with the intention that it should be acted on is sufficient. **M. 105.**

S. 03 **Q**. A soldier on the line of communications in South Africa obtained from a canteen two bottles of beer (and paid for them) by means of an order to which he had himself affixed a signature purporting to be that of his C.O. How would you charge the offender?

A. Under S. 40. The beer was paid for, and the intention to deceive the public or a person is not an intent to defraud.

P.C 02 **Q**. When a person subject to military law commits a contempt of court before a court-martial how should the court proceed?

A. An apology may be accepted or the court may order him to be taken in military custody, and order him to be tried by another court-martial for contempt of court, or, if he uses insulting or threatening language, or causes an interruption or disturbance in the proceedings, the court may, as an alternative, if they think it expedient, order, under the hand of the president, that the offender be awarded H.L. or, in the case of a soldier, D. for a period not exceeding 21 days. **S. 28.**

Q. Criticize the following case: A court-martial, the proceedings of which are being continually and offensively interrupted by a soldier spectator, orders him to undergo detention for 21 days. P.C.10

A. A legal proceeding, but a court, on any disturbance arising, should have the offender at once removed from its precincts, and any further attempt at annoyance could be dealt with regimentally.

Q. Mention the course that may be adopted by a court-martial whose proceedings have been disturbed by a civilian. S.E.08

A. Usually the reception of an apology or exclusion from the court (care being taken not to use any unnecessary force) will be the best means of dealing with the case. The president has, legally, the power to certify the contempt to the High Court of Justice, but practically, the circumstances of the case will be reported to the convening officer for reference to head-quarters.
S. 126; K. App. 8.

Q. After the assembly of a D.C.M., but before the swearing in of members, the accused makes use of insulting language to the court, how may he be punished? S.E.04

A. The court is formed when the members are assembled and the accused may be tried for contempt by another court, or, by an order under the hand of the president, be awarded H.L. or, in the case of a soldier, D. for a period not exceeding 21 days.

The Court will in either case adjourn and the original charge cannot be tried until the punishment for contempt has been undergone. **S. 28.**

P.C. 03 **Q**. A military witness before a court-martial refuses to answer a question to which the court may legally require an answer. Can he be punished?

A. He can be taken into custody and tried by another court for refusing to give evidence. **S. 28.**

S.E. 07 **Q**. Define "perjury."

A. 1. A person commits the offence of *perjury* who, when duly sworn and examined as a witness, in a judicial proceeding, asserts some fact or condition of things material to the issue, which he does not at the time believe to be true or of which he knows he is ignorant.

S. 29; M. 106.

P.C 04 **Q**. A charge of perjury avers three facts: state them and say in brief detail how each is to be proved.

A. 1. That the statement was made on oath.
2. That the statement was false.
3. That the accused made it knowing it to be false.

The proceedings containing the false statement should be produced and their accuracy sworn to by a witness. The falsity of the statement must be sworn to by more than one witness, or strong corroborative proof must be given.

The third fact is always difficult to prove and requires strong corroborative evidence.

(At a court-martial it is not necessary to prove that the false statement was material to the issue.)

S. 28, 126; M. 67, 106.

S.E. '0 **Q**. At a Court of Inquiry on recovered prisoners of war, a witness gives false evidence. For what offence may he be tried and what must be proved to secure conviction?

A. "Wilfully giving false evidence when examined on oath before a Court of Inquiry." (See last answer).

Q. What is the law relating to the injurious disclosure of information? **P.L. 00**

A. The unauthorized communication of intelligence to the enemy on active service, even by indirect methods (such as sending communications to friends or newspapers), is punishable with penal servitude.

Injurious disclosures, not on active service, either verbal, in writing, or otherwise, is punishable by imprisonment. A charge under this latter head must show how and when the injurious effects were produced.

S. 5, 36.

Q. What are the two main points on which a convening officer must satisfy himself before ordering the trial of a soldier under S. 40. **C. 08**

A. An offence charged under this section must be to the prejudice both of good order and military discipline, having regard both to the conduct itself and the circumstances in which it took place. (Stress must be laid on the word *military*, and offences of a social character or connected with civilians should not be charged under this section, unless they are of a nature tending to infringe military discipline.)

The *saving clause* provides that no charge shall be made under this section for an offence which is a specific offence under any other provision of the Army Act, and is not a civil offence; although the conviction of a person so charged is not necessarily invalidated.

S. 40; M. 23.

Q. Could a soldier be tried under the Army Act for writing an anonymous and insubordinate letter to a superior officer? If so, under what section would you charge him, and what would it be necessary to prove? (The letter does not amount to a false accusation). **P.C. 03**

A. S. 40.

It would be necessary to prove that the accused wrote the letter, *i.e.*, that it was in his handwriting, and that circumstances all tended to show that it was written by him.

C. 05 **Q**. How are attempts to commit military offences dealt with? State the exceptions.

A. 1. Under S. 40.

2. Exceptions:—Attempt to desert—Attempt to escape from custody—Attempt at suicide.

S. 12, 22, 38.

P.L.06 **Q**. Sergeant D. is to be tried for leaving his guard without orders; Private E. for making a false statement to his C.O. that he had deserted from another regiment; Private F. for procuring plain clothes for a man knowing he was about to desert; Sergeant G for forging the name of the captain of his company to a cheque. Under what sections of the Act would these soldiers be charged?

A. D., S. 6 (1) (*b*).
E., S. 27 (3).
F., S. 14 (1).
G., S. 41.

S.E.08 **Q**. Explain how a person not subject to military law who has bought regimental necessaries from a soldier can be proceeded against.

A. He may be apprehended without warrant and taken before a court of summary jurisdiction. For the first offence he is liable to a fine of £20 and treble the value of the property. For a second offence he is liable to a punishment as above, or to six months' H.L.

S. 156.

S.E. 98 **Q**. A C.O. wilfully neglects to assist a constable in apprehending a soldier who is accused of an offence against the civil law. What action might be taken by the civil authorities?

A. He may be convicted of a misdemeanour in any supreme court, and is liable to fine and imprisonment.

S. 162.

SECTION XIX.

PUNISHMENTS.

Q. Mention any offence for which a court-martial has no option as to the punishment to be awarded in case of conviction. **C. 08**

A. 1. The offence of behaving in a scandalous manner, unbecoming the character of an officer and a gentleman, in which case the only punishment is cashiering.

2. The civil offence of murder, in which case death is the only punishment.

S. 16, 41; M. 23.

Q. Give in detail the punishments which may be inflicted by courts-martial in the case of officers. **C. 09**

A. *Punishments* :—

1. Death.
2. Penal servitude for not less than three years.
3. Imprisonment not exceeding two years.
4. Cashiering.
5. Dismissal from His Majesty's service.
6. Forfeiture of seniority of rank.
7. Reprimand or severe reprimand.

Provisions :—

1. An officer shall be sentenced to be cashiered before he is sentenced to penal servitude or imprisonment.
2. An officer when sentenced to forfeiture of seniority of rank, may also be sentenced to reprimand, or severe reprimand.
3. An officer may be sentenced to forfeitures and deductions from pay in certain cases in addition to other punishment. **S. 44, 137.**

C. 09 **Q**. Give in detail the punishments which may be inflicted by courts-martial in the case of soldiers.

A. 1. Death.

2. Penal servitude for not less than three years.
3. H.L. or D. not exceeding two years.
4. Discharge with ignominy.
5. In the case of a N.C. officer, forfeiture of seniority of rank, or reduction to a lower grade or to the ranks.
6. Forfeitures, fines, and stoppages.

S. 44, 138, 183.

E.C. 97 **Q**. Point out the cases in which punishments can be combined.

(*a*) Penal servitude or imprisonment may be combined with discharge of ignominy.

(*b*) Reduction of a N.-C. officer may be combined with other punishment.

(*c*) Forfeitures, fines, and stoppages may be combined with the other punishments.

(Regard must be had to the nature and degree of the offence, *e.g.*, forfeitures would not be combined with discharge with ignominy, nor fines awarded except for the offence of drunkenness.) **S. 44, 138, 183.**

P.C. 10 **Q**. Quote the regulations as to the trial and punishment of warrant officers by court-martial.

A. (*a*) They cannot be tried by regimental court-martial. The president of a court for the trial of a warrant officer must not be below the rank of captain.

(*b*) By a district court-martial they can only be awarded:—

1. Dismissal from the service.
2. Reduction to a lower place in the list of his rank.
3. Reduction to an inferior class of warrant officer.

4. Reduction to a lower grade or (if originally enlisted as a soldier) to the ranks.
5. Forfeitures, fines, and stoppages.

S. 182.

Q. Comment upon the following sentences:— C. 09

(*a*) A regimental court-martial sentenced a private soldier to 42 days' D. and to be discharged with ignominy.

(*b*) A district court-martial sentenced a sergeant to be reprimanded.

(*c*) A sergeant arraigned on a charge of drunkenness was sentenced to be fined £1.

A. (*a*) The court cannot award discharge with ignominy.

(*b*) A punishment that can only be awarded to officers.

(*c*) A sergeant is in a position of trust, and, if he fails in that trust, should have his status as sergeant reduced before inflicting another punishment. **S. 44, 47 ; K. 583 ; M. 577.**

Q. Enumerate the punishments that can be awarded by a regimental court-martial. E C. 00

A. 1. 42 days' detention.
2. In the case of a N.-C. officer, forfeiture of seniority of rank or reduction to a lower grade or to the ranks.
3. Fines and stoppages.
4. Dismissal of a soldier in the Territorial Force.
5. Dismissal, or reduction to lower grade of pay of schoolmaster.

(As a rule a N.-C. officer above the rank of corporal is not to be tried by this court.)

S. 47, 181, 183 ; K. 438.

Q. Where are sentences of imprisonment and penal servitude awarded abroad carried out? **P.C. 94**

A. Arrangements are made with the Indian and Colonial Governments as to the reception in prisons, but a prisoner sentenced abroad to penal servitude or to a term of imprisonment or detention exceeding 12 months should be transferred as soon as practicable to a convict establishment or prison in the United Kingdom, unless he belongs to a class with respect to which a Secretary of State has declared that such a transfer is not beneficial. **S. 131.**

P.C. 01 **Q**. What classes of military convicts are not transferred to the United Kingdom to undergo sentences of penal servitude?

A. Those classes with respect to which a Secretary of State has declared that, by reason of climate, place of birth or place of enlistment, it is not beneficial to transfer them. **S. 131.**

E.C. 95 **Q**. What special regulations exist as to sentences of imprisonment passed by courts-martial abroad?

A. 1. A prisoner sentenced to more than 12 months' imprisonment or detention in India or in a Colony must be transferred as soon as practicable to a prison in the United Kingdom, unless he belongs to a class with respect to which a Secretary of State has declared that such a transfer is not beneficial, or unless the court or confirming authority, for special reasons, otherwise order. **S. 131.**

P.C. 06 **Q**. An Army Reserve man, not called out, behaves in an insubordinate manner to an officer who is acting under the R.F. Act. Is he liable to punishment?

A. He is liable to trial by court-martial or to be fined by a civil court up to £25. **R.F.A., 6.**

P.C. 03 **Q**. When a regiment embarks for foreign service, what is done with the soldiers belonging to it who are in detention barracks?

A. A return with full particulars will be sent to the competent authority in time to allow of arrangements being made for removing such of them as may be selected for embarkation.

Soldiers under sentence will usually be released on or before the date of embarkation.

Offenders not so released, and those sentenced shortly before embarkation for periods not exceeding 21 days will be embarked and treated on board ship as prisoners up to the expiration of the sentence.

As a rule, soldiers under sentence on board a ship will be released on disembarkation, and they must not in any circumstances be re-committed to a detention barrack under their former sentence.

S. 63; K. 622, 623, 624.

Q. Under what circumstances would a court-martial sentence a soldier to be "discharged with ignominy" in addition to other punishment? **C. 05**

A. In addition to P.S., and to H.L., in the case of persistent offenders, and for gross violence to superiors, and for offences of a felonious and disgraceful nature, and for an offence under S. 32. **S. 44; K. 583.**

Q. On the 1st October, 1909, Private A was sentenced to 1 year's H.L. and to be discharged with ignominy. On 6th June, 1910, the man committed a serious breach of discipline while in prison. Can he be tried by court-martial? **P.L. 10**

A. Yes. He can be punished as if he continued to be subject to military law, but the period of consecutive imprisonment must not exceed 2 years.

S. 68, 158.

Q. Criticize the following cases:— **P.C. 10**

(*a*) A soldier undergoing 6 months' detention is sentenced on the last day of his punishment to 2 years' imprisonment for a fresh offence.

(*b*) A court-martial sentences a soldier to 6 months' H.L. and to be discharged with ignominy. The confirming officer commutes the imprisonment to detention. The man is discharged with ignominy at the expiration of his sentence.

A. (*a*) The imprisonment must not exceed 18 months, and in a case which demanded such a punishment, discharge with ignominy should have been added. The confirming officer under the circumstances should commute the punishment to detention not exceeding 18 months.

(*b*) The discharge with ignominy should have been remitted at time of commutation, as it cannot accompany a sentence of detention. Any record as to discharge with ignominy must be cancelled, and the case dealt with by a special discharge. **S. 68 ; K. 583.**

P.L. 08 **Q**. Where do soldiers at home undergoing H.L. by sentence of court-martial carry out their sentence?

A. In a public prison for civil offences and for offences of a felonious or disgraceful character.

In a military prison for offences against discipline. **K. 607.**

E.C. 95 **Q**. What are the regulations as to the treatment of soldiers remanded for trial by court-martial, who are sent to detention barracks for safe custody?

A. 1. They do not wear prison clothing, and are supplied with the ordinary rations and messing of soldiers.

2. They will be kept apart from soldiers undergoing sentences, and will not be subjected to any special prison labour. **K. 648.**

S. 05 **Q**. Can deductions be made from the ordinary pay of an officer to make good any loss of public property caused by negligence on his part?

A. Yes, if, after investigation, it appears to the Secretary of State that it was so caused. **S. 137.**

P.L. 08 **Q**. State concisely the various circumstances under which a soldier forfeits his pay.

A. Pay is forfeited for every day that a soldier is absent from duty by reason of his desertion, absence without leave, imprisonment, or detention. It is also forfeited in certain cases of temporary custody and sickness in hospital due to an offence.

Stoppages of a portion of pay are awarded to make good loss or damage, compensation or fine. **S. 138.**

Q. Explain fully the meaning of the terms "forfeitures," "fines," "stoppages" referred to in the scale of punishments by court-martial. **P.C. 00**

A. *Forfeitures* are awarded in respect of deferred pay, service towards pension, and military decorations and rewards, such as medals and good conduct badges, with the pay or money attached to them.

Fines can only be imposed for drunkenness and cannot exceed one pound.

Stoppages are awarded to make good any expenses, loss, damage or destruction arising from the offence of which the prisoner has been convicted. **S. 44, 138.**

Q. Can all descriptions of courts-martial award the punishment in the soldier's scale styled "forfeitures"? **P.L. 97**

A. No. Under the Royal Warrant for Pay they cannot be awarded by a regimental court-martial.

Q. State briefly what you know as to forfeiture of service (towards discharge). **E.C. 07**

A. Service (for the purpose of reckoning towards discharge or transfer to the Reserve) is only forfeited on conviction or confession of desertion and fraudulent enlistment, or upon trial being dispensed with for these offences. In the case of a re-engaged soldier the service is forfeited from the date of the re-engagement.
S. 79 ; K. 273.

Q. What are the latest regulations as to the restoration of forfeited service? **P.C. 99**

A. It will be restored (1) on promotion to rank of sergeant, (2) on completion of three years clear of entry in the regimental conduct book. It *may* be restored by the Army Council in special cases. **K. 273.**

E.C.96 **Q**. How do the punishments of penal servitude and imprisonment awarded to soldiers affect their service?

A. A soldier who has undergone penal servitude is discharged and forfeits all his past service.

A soldier who has been sentenced to imprisonment forfeits his qualifying service (towards pension) for the period of imprisonment and custody before trial, but the imprisonment does not affect his service as reckoned towards discharge and transfer to the reserve.

P.W., 1064.

P.C.03 **Q**. A soldier is sentenced to 84 days' H.L. What effect has this punishment on his good conduct badges, pension, and date of discharge?

A. *Good conduct badges.*—One badge is forfeited.

Service towards pension is forfeited for the 84 days, and for any period of custody in the guard-room previous to the day of trial.

Service towards discharge. — The sentence does not affect it. **S. 79; P.W., 1021, 1064.**

P.C.01 **Q**. Explain the difference between forfeiture of service towards discharge and forfeiture of service towards pension.

A. The contract made with a soldier as to his term of enlistment or re-engagement is only altered by reason of his committing the offences of desertion or fraudulent enlistment. The *pension* of a soldier depends on the number of days' good service he has completed, and he can be sentenced to forfeit such service by reason of a crime, and as a matter of course forfeits service for any prolonged absence from duty due to imprisonment, detention or absence without leave. **S. 79; P.W., 1064.**

.L.99 **Q**. A soldier is convicted of fraudulent enlistment and sentenced to imprisonment with hard labour for one year; how will his good conduct badges, deferred pay, medals and service towards discharge be affected?

A. He will forfeit everything, but will be held to serve for the term of his last attestation or re-engagement reckoning from the date of conviction. **S. 79; 273.**

Q. Does a soldier while absent without leave reckon service towards (*a*) discharge or transfer to the Reserve, (*b*) pension? P C. 02

A. (*a*) Yes.

(*b*) No, except for absence not exceeding five days. **S. 79; P.W. 1064.**

Q. Under what circumstances can a man possessing good conduct badges lose one or all of them? **P.C. 94**

A. 1. One badge is forfeited for every entry in the regimental conduct book.

2. All or any good conduct badges may be forfeited by sentence of a general or district court-martial.

3. All good conduct badges are forfeited—

   (*a*) On forfeiture of service towards engagement.

   (*b*) On conviction under S. 17 or S. 18.

   (*c*) On sentence by a court-martial or civil court to imprisonment exceeding six months.

   (*d*) On improper enlistment from the Army Reserve, if re-transferred to the reserve.

   (*e*) On discharge with disgrace or discharge for false answer on attestation.

P.W. 1021—1025.

Q. Describe the circumstances under which the medals of a soldier are, as a matter of necessity, forfeited. **P.L.** 95

A. 1. On conviction (or dispensation with trial) for desertion or fraudulent enlistment, or any offence under S. 17 and S. 18 or similar offences by a civil court.

2. On discharge, with disgrace or for false attestation.

3. On being sentenced by a civil court to more than six months' H.L. **P.W. 1158.**

Q. Give the authority for the statement that service forfeited by a soldier is restored to him on his promotion to the rank of sergeant. P C. 00

A. K. 273.

S.E. 97 **Q**. A N.-C. officer is tried by court-martial for breaking out of barracks and is reduced to the ranks. After the trial has taken place it is found that in committing the offence he damaged the roof of an outhouse to the extent of ten shillings. Could the offender be ordered to pay for the damage by his C.O.? Give your reasons.

A. No. Where a soldier has been convicted by court-martial for an offence, his C.O. cannot subsequently award compensation for damage done by that offence. It would virtually be a second punishment for the same offence. **S. 138.**

E.C. 05 **Q**. What limit is there to the amount of stoppages that may be enforced against a soldier, by sentence of a court-martial?

A. The total amount of stoppage shall not exceed such sum as will leave the soldier, after paying for his messing and washing, less than one penny a day. **S. 138.**

A. 09 **Q**. Two men are found guilty of having jointly injured Government property to the value of fifteen shillings. To what amount of stoppages should each be sentenced by the court?

A. Each offender may be sentenced to make good the whole amount of fifteen shillings; and in the event of one of them dying, or otherwise ceasing to be amenable to the award, the whole amount might be legally levied on the other.

Where, however, both remain amenable, the stoppage of fifteen shillings would be divided between them in equal proportions. **S. 138.**

P.C. 08 **Q**. What are the special provisions now in force for the punishment of offences committed on active service, and how are the powers of a provost-marshal thereby affected.

A. *Any* court-martial may award to *any soldier* for *any* offence field punishment not exceeding three

months, and in addition to or without any other punishment may order forfeiture of pay for a period not exceeding three months, commencing on the day of sentence. In the case of an offence by a soldier (not being a non-commissioned officer), a C.O. may under similar conditions award field punishment and forfeiture of pay for periods not exceeding 28 days. A provost-marshal, in respect of a soldier undergoing field punishment, has the same powers as the governor of a military prison.
S. 44, 46, 74.

Q. Can a regimental court-martial be assembled on active service; if so, can it award field punishment, and for what offences? S.E. 04

A. The court can be assembled and can award field punishment not exceeding three months for any offence.
S. 44.

Q. A soldier on active service is sentenced to field punishment No. 1. Up to how many days may this be given by his C.O. and of what may it consist? P.C.09

A. 1. 28 days.

2. The offender may be fettered by means of irons, straps or ropes, and while so secured may be attached in a fixed position to a fixed object, but he must not be so attached for more than two hours a day, or for more than three days out of four, or for more than 21 days in all. **S. 46; M. 598.**

Q. In what circumstances does a soldier of the Regular Forces render himself liable, on commutation, wholly or partly, of other punishment to general service? P.L.09

A. A soldier convicted of desertion or of fraudulent enlistment, or who, having confessed the offence, is *liable to be tried* (but the trial has been dispensed with), and a soldier sentenced by court-martial to not less than three months' detention shall be liable, in commutation, wholly or partly of other punishment, to general service. **S. 44, 57, 83, 161.**

P.L. 08 **Q**. Where is the fact of general service having been ordered recorded?

A. In the soldier's record of service. In the column of remarks in the regimental conduct sheet where the offence is entered. **K. 597.**

P.C. 05 **Q**. What is the object of this commutation?

A. It enables a man to be sent to serve abroad or in some other sphere, where, by reason of more work, less temptation, or otherwise, he may have a chance of turning over a new leaf and obtaining a fresh start in life.

M. 186.

SECTION XX.

CHARGES.

Q. What is meant by a charge, and what should a charge-sheet contain? **E.C. 09**

A. A charge means an accusation that a person has been guilty of an offence. A charge-sheet contains the whole issues to be tried by a court-martial at one time and may contain one or several charges. **R. 9.**

Q. In framing a charge, what are the special points to which you would direct your attention? **A. 07**

A. 1. A charge-sheet will begin with a description of the accused (his number, rank, name and corps), and should show by the description or by express averment that he is amenable to military law in respect of the offence charged.

2. Each charge should state one offence only, and in no case should an offence be described in the alternative in the same charge.

3. The charge should be divided into two parts—

   (*a*) The *statement of the offence*, which should be in the words of the Army Act;

   (*b*) The *statement of particulars*, which should be sufficiently explicit as to names, dates, and circumstances as to leave no doubt in the mind of the accused as to what offence he is charged with. **R. 10, 11; M. 583.**

(The charge-sheet should be signed by the C.O. of the accused. The section of the Army Act under which each charge is framed is inserted in the margin. If the accused has elected to be tried it should be so stated at top of charge-sheet.)

C. 07 **Q**. With reference to the framing of a charge sheet give the rules governing the "contents of the charge."

A. See above (2), (3). **R. 11.**

P.L.04 **Q**. What is the meaning of the expression "time is of the essence of the offence?"

A. In cases such as absence from parade, or drunkenness of a sentry, it is the "essence of the offence" that at a particular time a soldier was absent from parade or drunk on his post, and the exact time must be stated in the charge. **M. 531.**

C. 08 **Q**. During the trial by court-martial of No. 537, Private Arthur Jones, 2nd Battalion Norfolk Regiment, it is discovered that his number and Christian name have been incorrectly given in the charge-sheet. Can the court rectify the errors?

A. If there is any mistake in the name of the accused, the court may at any time during the trial amend the charge-sheet so as to correct the mistake. It must, of course, be clear that the accused is the person intended to be charged in the charge-sheet.
R. 12, 33.

S. 89 **Q**. An application for a district court-martial passes through your hands as a staff officer. In examining the charge-sheet, to what points should your attention be principally directed?

A. 1. That the person charged is amenable to military law and to the jurisdiction of a district court-martial, and is properly described.

2. That the offence or offences are of a nature that may be suitably tried by a district court-martial.

3. That each charge discloses an offence under the Army Act, is framed in accordance with Rules of Procedure and King's Regulations, and is so explicit as to be readily understood by the accused.
4. That each charge states one offence only, and that in no case is an offence described in the alternative.
5. That in cases where there is more than one charge in the charge-sheet, the advisability of having more than one charge-sheet be considered.
6. A multiplicity of charges should be avoided. Where there are several offences charged it is best to select the gravest and omit the minor ones.
7. That the charge sheet is signed by the C.O. of the accused, that no alterations are made in it without reference to the convening officer, and that the order for trial is written on it.

R. 11, 17, 23, 62; M. 583.

Q. Who is responsible that the charge for an offence is properly framed? **C. 05**

A. The convening officer. **R. 17; K. 567.**

Q. A soldier is charged with selling certain articles. (*a*) Is it necessary to state the value of all articles of kit in the particulars of the charge? (*b*) Should an award ever be made of stoppages in respect of clothing and necessaries? **P.C. 11**

A. (*a*) The value of any article, in respect of which it is desired that the court shall sentence the offender to stoppages, must be stated in the "particulars" of the charge. This, in the case of kit, applies only to articles of Government property, the value of which has to be made good to the public. The value of necessaries or personal clothing need not be stated, as deficiencies have to be made good by the soldier as a matter of necessity and his captain debits his account for the same.

(*b*) Yes, in the exceptional cases of (1) obtaining a free kit by reason of fraudulent enlistment, (2) clothing and necessaries issued to a Special Reservist. **K. 561, 563, 564.**

C. 07 **Q**. Explain what is meant by alternative charges,

A. When there is a doubt as to how the offence charged is to be described, or what military offence has been committed, two or more alternative charges may be used. The accused can only be convicted on one of these charges, and is necessarily acquitted of the other. These *differently worded* charges refer to the *same offence*, and are, therefore, placed on the *same charge-sheet*.

e.g.: If a man was found improperly in possession of the goods of others, and it was difficult to prove how they came into his keeping, alternative charges might be preferred of (1) stealing goods, the property of a comrade; (2) receiving, knowing them to be stolen, goods, the property of a comrade. **R. 44; M. 530.**

P.L. 03 **Q**. Describe the different ways in which a defect in a charge-sheet may be amended.

A. When the defect is detected—

1. *Before the assembly of the court*, the convening officer amends it.
2. *After the assembly of the court, and before the examination of the witnesses*, the court adjourns, and the convening officer amends the charge, or directs a new trial to be commenced on a fresh charge.
3. *After the examination of witnesses is commenced* the court can amend—
   (*a*) A mistake in the name or description of the accused.
   (*b*) Pass a special finding to amend defects in the particulars of the charge. **R. 17, 33, 44.**

P.L. 07 **Q**. What course is open to a court-martial in the following circumstances?

(*a*) After the accused's plea of "not guilty" has been recorded a mistake in a material date in the charge-sheet is discovered.

(*b*) When about to sentence the accused it is found that a figure in his regimental number is incorrectly given in the charge-sheet.

A. (*a*) The court adjourns and refers to the convening officer who can amend the charge or order a new trial.

(*b*) The court may amend the charge-sheet so as to correct the mistake. **R. 33.**

Q. After the examination of witnesses has commenced at a court-martial it is found that the charge-sheet is defective. To what extent can it be amended? **P.C. 04**

A. (*a*) A mistake in the name or description of the accused may be amended at any time during the trial if it is clear to the court that he is the person intended to be charged in the charge-sheet, and that he is not prejudiced in his defence by the mistake having been made. Any alteration is initialled by the president.

(*b*) When the court are of opinion that the essence of the charge is proved, but the particulars, as alleged, are defective, they may (if the accused is not thereby prejudiced in his defence) amend the defect by means of a *special finding*. **R. 33, 44.**

Q. Under what circumstances would the charges against an accused be entered on separate charge sheets. **P.C. 07**

A. 1. In cases of offences of different descriptions not forming part of the same wrongful transaction.

2. In cases of more than one offence of desertion or fraudulent enlistment where it is desired that P.S. be awarded for a second offence.

3. Where there is likely to be any difficulty in keeping distinct the different cases and the evidence thereon; or when a considerable time has elapsed between the commission of the offences, or when different sets of witnesses are required. **R. 62.**

C. 06 **Q**. What is the object of using separate charge-sheets?

A. Chiefly for the purpose of enabling the court and the accused to keep distinct in their minds the different cases and the evidence thereon, with a view to the accused making a proper defence, and the court arriving at a proper finding, without being confused by evidence on entirely distinct cases. **R. 62.**

P.C. 07 **Q**. How is the ordinary procedure affected by charges being entered on separate sheets?

A. When separate charge-sheets are used, the accused shall be arraigned and, until *after the finding*, tried upon each charge-sheet separately. The court then proceeds to pass one sentence in respect of all the charge-sheets. **R. 62.**

P.L. 09 **Q**. At Gosport, between 2 and 4 a.m. on the 5th April, 1909, No. 1243, Private A. B., 2nd Battalion Wessex Regiment, was drunk when sentry on No. 1 Post, Main Guard. Frame a charge.

A. *When a soldier, acting as sentinel, being drunk on his post*, in that he, at Gosport, on the 5th April, 1909, between 2 and 4 a.m., when sentry on No. 1 Post, Main Guard, was drunk. **S. 6.**

C. 10 **Q**. Write out the "statement of the offence" in each of following cases:—

Private S.—Striking Private A on parade.

Private T.—Attempting to escape from guard detention room.

Private D.—When warned for guard by Corporal B, said, "I'm fed up with guards, you swine," and threw a boot at the corporal.

Lance-Corporal W.—Allowing a soldier to escape when in his custody.

A. S. "*Conduct to the prejudice, etc.*" **S. 40.**

T. "*When a person in lawful custody attempting to escape.*" **S. 22.**

D. "*Using violence to his superior officer being in the execution of his office,*" *or* "*using insubordinate language to his superior officer.*" **S. 8.**

W. "*Wilfully allowing to escape a person committed to his charge.*" **S. 20.**

Q. Write out a "statement of offence" in each of the following cases:— **S.E. 09**

1. Private B, on active service, assaults a sutler, who is bringing provisions into camp.
2. Corporal C strikes a police constable, in whose custody he has been placed.
3. Sergeant D strikes a private.
4. Lieutenant E displays a white flag in the presence of the enemy.

A. 1. *When on active service doing violence to a person bringing provisions to the forces.* **S. 6.**

2. *Striking a person in whose custody he was placed.* **S. 10.**

3. *Striking a soldier.* **S. 37.**

4. *Conduct to the prejudice, etc.* (to be tried by G.C.M.). **S. 40; K. 555.**

Q. Gunner J. R., while on sentry duty, is found to be drunk. When taken into custody he struck with his fist on the face Sergeant S, who was in command of the escort. On what charges would he be tried? **E.C. 08**

A. 1. "*When a soldier acting as sentinel being drunk on his post.*" **S. 6.**

2. "*Striking a person in whose custody he was placed.*" **S. 10.**

Q. (*a*) Corporal C. strikes with his fist Sergeant A., who is in charge of the barrack-room. **C. 08**

(*b*) Colour-Sergeant A. strikes Corporal B. with a cane on parade.

Under what sections of the Army Act are the charges preferred?

A. (*a*) S. 8 (1) or S. 8 (2).

(*b*) S. 37 (1).

P.C. 04 **Q**. Private C. has been ordered to show kit daily till further orders, and has not done so. As C.O. deal with the case.

A. Charge under S. 40. The disobedience is not immediate or proximate to the command, and does not fall under S. 9.

P.L. 06 **Q**. A soldier under sentence, on being taken back to the guard-room after having been awarded detention by Col. A., says in the hearing of the men of the escort, but not in that of the N.-C. officers, "I will do for Col. A." Frame a charge-sheet.

A. The charge would be framed under S. 40, as the language was not used to a superior officer.

P.L. 06 **Q**. Comment on the following charge:—

Using threatening language to his superior officer.

In that

He, at ——, on ——, said to Corporal A., "I'll do for that Sergeant B."

A. The accused is charged with using threatening language to his superior officer, Corporal A ——, but he evidently does not do this, but makes use of threatening language regarding another superior officer, Sergeant B. If the expression used was made in the hearing of Sergeant B——, the accused might be charged with using "threatening language, etc., to Sergeant B." But as the matter stands it is evident the charge cannot be upheld, and must be amended by substituting for the word "threatening" the word "insubordinate." **S. 8.**

E.C. 06 **Q**. Private A., when on parade, is reprimanded by Sergeant X. for having a dirty rifle, and losing his temper throws his rifle on the ground. Under what section of the Act would the offence be tried?

A. If the rifle were thrown down so as to strike against Sergeant X, or with the evident intention of injuring him, the soldier might be charged with "Using (or offering) violence to his superior officer, being in execution of his office," S. 8, but under ordinary circumstances the charge would be made under S. 40.

Q. Give your opinion as to the following charges in applications for courts-martial:— S. 97

(*a*) *Using threatening language to a garrison provost in the execution of his office.*

In that

He, at Hong Kong, on 15th October, 1897, said to Gunner Smith, G.M.P., "I will kill you," or words to that effect.

(*b*) A corporal of the Army Medical Corps is charged with—

S. 17. First charge:—

When charged with public goods embezzling the same, viz., certain medical comforts.

S. 24. Second charge:—

Losing by neglect the same articles.

A. (*a*) If the garrison provost was the "superior officer" of the accused he might be charged with "using threatening language to his superior officer," but a military policeman is not, as such, the superior officer of a private soldier. The offence should be charged under S. 40.

(*b*) The second charge is invalid. "Losing by neglect" is only applicable to the articles specifically mentioned in S. 24 (1), an alternative second charge might be framed under S. 40.

Q. A soldier on parade, on being reproved by his captain, throws his rifle violently to the ground; the captain orders him to pick it up, and repeats the order. The soldier does not obey, but folds his arms, and says: "I won't soldier at all if I'm bullied like this." The rifle is damaged to the value of 4s. With what offence would the soldier be charged? C. 96

A. With "disobeying a lawful command." The damage to the rifle should be referred to in the particulars of the charge. **S. 9.**

S. 91 **Q**. As staff officer, approve or amend the following charges sent in this day with applications for district courts-martial:—

Private A.—*Disobeying a lawful command given by his superior officer.*

In that

He, at Aldershot, on the 19th November, 1891, when he had been ordered by the officer commanding his company, at the previous kit inspection on the 14th November, to show his kit daily till further orders, did not do so.

Private B.—*After having been discharged with disgrace from part of His Majesty's forces, enlisting in the regular forces without declaring the circumstances of his discharge.*

In that

He, at St. George's Barracks, London, on the 15th September, 1891, after having been discharged as "objectionable" from the Royal Marines, enlisted for general service in the infantry without declaring the circumstances of such previous discharge.

A. *Private A.* should be charged under S. 40 with: "Conduct to the prejudice, etc." The *command* is to show kit till *further orders,* and non-compliance with this order cannot under the circumstances be proved.

Private B. has not been "discharged with disgrace" as defined in S. 32, and should be charged with "false answer" (on attestation) under S. 33.

S.H. 04 **Q**. Point out errors in the following charges:—

1. *An act to the prejudice of good conduct and military discipline.*

In that

He, at Aldershot, on the 25th July, 1904, when being conducted to the guard-room, struck, with his fist, in the face, Private R. Jones, one of the escort.

2. *Attempting to break out of barracks.*

In that

He, at Glasgow, attempted to break out of barracks when a defaulter.

A. 1. The charge should be for

Striking a person in whose custody he is placed. **S. 10.**

2. No such offence in Army Act, so charge under S. 40.

Q. A soldier is apprehended by the military police and while being conveyed to the guard-room trips up one of the escort and escapes. Frame a charge sheet. **S. 01**

A. He would be charged with—

1. *Using violence to a person in whose custody he was placed.* **S. 10.**
2. *When a prisoner under escort, escaping.* **S. 22.**

Q. Private Smith was found in the "Sun" Inn, at Aldershot, at 8 a.m., on the 19th January, 1910. The "Sun" Inn had been placed out of bounds in Garrison orders. Make out a charge for his trial under Sec. 11. **E.C. 10**

A. *Neglecting to obey garrison orders.*

In that

He, at Aldershot, on the 19th January, 1910, was found in the "Sun" Inn, contrary to the garrison order directing that the "Sun" Inn be placed out of bounds. (It would be more usual in such a case to charge under S. 15).

Q. As a staff-officer approve or amend the following charges sent in this day with application for district court-martial:— **S. 92**

Private A.— *Breaking out of Barracks.*

In that

He, at Devonport, on 24th November, 1892, attempted to break out of barracks at 2 a.m. by climbing on the roof of the cook-house.

Private B.— *Fraudulent enlistment.*

In that

He, at St. George's Barracks, London, on 21st November, 1892, when belonging to H.M. Navy, enlisted for service in the Royal Artillery.

Private C.—*Losing, by neglect, his regimental necessaries and military decorations.*

In that

He, at the Curragh Camp, on the 20th November, 1892, was deficient of the following regimental necessaries and military decorations:—

Two flannel shirts; one pair of socks; knife, fork, and spoon; two towels; one Egyptian War medal, value 5s. 6d.; one Khedive's star, value 4s. 6d.

A. *Private A.*—The offender did not break out of barracks, as he did not leave the confines of the barrack. He should be charged under S. 40 for "an act to the prejudice of good order and military discipline."

Private B.—This is not a case of fraudulent enlistment. The offender should be charged under S. 33 for "making a wilfully false answer to a question set forth in the attestation paper, etc."

Private C.—Losing by neglect a military decoration is not an offence. Omit from the statement of offence and particulars all reference to military decorations. **S. 24.**

P.L. 06 **Q**. Write out a "statement of the offence" in the case of a soldier found in a public-house placed "out of bounds" by a garrison order.

A. "When in garrison being found beyond the limits fixed by garrison orders without a pass or written leave from his Commanding Officer." **S. 15.**

P.C. 02 **Q**. Frame a charge against an Army Reserve man who has failed to report himself on mobilisation and is afterwards arrested by the civil police.

A. He might be charged with desertion or absence under S. 12 or S. 15 of Army Act, or S. 15 of Reserve Act. A usual charge would be "*Failing to appear at the place of rendezvous appointed by his Commanding Officer.*"

Q. State shortly what evidence would be required to obtain a conviction on the above charge. P.C.02

A. 1. That the Reserve force was mobilised.
2. That an order to report himself was sent to the man at his registered address.
3. That he did not appear at the time and place of mobilisation.
4. That he was afterwards apprehended.

Q. What charges would you prefer in the following instances:— P.L.07

(1) Private A., when warned for picquet on the following day, says: "I will not do it; I refuse to go on picquet to-morrow."

(2) Private B., who forms one of a draft sailing for South Africa on 10th November, absents himself on the 9th and returns to barracks on 11th November.

A. (1) "Using insubordinate language to his superior officer." **S. 8 (2).**

(2) "When under orders for foreign service deserting His Majesty's service." **S. 12.**

Q. Give an illustration of the charge in the case of a lance-corporal who procured a suit of plain clothes for a private of his company—knowing the latter was about to desert. S.E.08

A. *Assisting a person subject to Military Law to desert His Majesty's Service.*

In that

He, at ...., on or about ...., well knowing that Private ...., ... Regiment, was about to desert, provided him with a suit of plain clothes.

(A Commanding Officer may now give permission to wear plain clothes when on furlough or pass, and it would be necessary to prove that they were expressly given for the purpose of assisting the desertion and that the accused had a knowledge of the intention to desert. The mere fact that plain clothes were procured for a soldier is not now an offence).

Lance-corporal is not legally a rank, and the offender would be charged as a private, the words "lance-corporal" being appended in brackets in his description. **S. 14.**

C. 09 **Q**. On 29th June, 1909, it was discovered that a soldier had fraudulently enlisted on 26th April, 1906. Only one regimental entry on 19th May, 1909. Is he liable to trial?

A. No, but forfeits all service prior to 26th April, 1906. **S. 161.**

P.L. 06 **Q**. It is proposed to try a soldier on evidence which shows that he pawned a watch lent to him by a comrade. Under what section would it be advisable to frame a charge and why?

A. S. 18 (4). To pawn property lent is a fraudulent conversion by a bailee, and the offender would be charged with "stealing goods the property of a comrade." **M. 101.**

S.92 **Q**. Frame a charge for trial by district court-martial on the following facts:—

Private E., —— Regiment, was servant to Captain X——, of the same regiment, which is quartered in Dublin. He has been confined for having gone, on the 22nd November, 1892, to a tradesman named John Jones, and obtained from him, in his master's name, but without his authority, a suit of plain clothes, value 50s.

A.

Such an offence of a fraudulent nature as is mentioned in Sub-section 5 *of Section* 18 *of the Army Act.*

In that

He, at Dublin, on or about the 22nd November, 1892, when employed as a servant to Captain X., —— Regiment, with intent to defraud, obtained from John Jones, in his master's name but without his authority, a suit of plain clothes, value 50s.

(The obtaining of an article by false pretences is not an offence specifically mentioned in the Army Act, and the offender might also be charged under S. 40, or for "obtaining goods under false pretences," under S. 41.)

M. 102.

Q. Corporal A, in command of an escort conducting Private B to Glasgow, goes into a station refreshment room, leaving Private B on the platform. Private B is thereby enabled to escape. Frame a charge against Corporal A. **P.C. 09**

A. Wilfully allowing to escape a person committed to his charge.

Vide charge-sheet No. 55. **S. 20.**

Q. A C.O. arranges for the supply by contract of groceries for the troops under his command, and receives from the contractor selected a commission fee of £50. Describe in the words of the Army Act the offence he has committed. **P.C. 95**

A. "Taken a fee of £50 in respect of the sale of provisions brought into the barracks of which he is in command." **S. 23.**

Q. Frame a charge for the trial of a soldier for selling his blankets and barrack bedding. **P.C. 93**

A. Making away with by selling his equipments.

In that

He, at ——, on ——, sold to ——, for the sum of —— shillings, one blanket, value ——, and one mattress, value ——. **S. 24.**

P.C. 96 **Q**. Point out what is wrong in the following charge:—

No. 1,000, Private A.B., 1st Battalion Wessex Regiment, a soldier of the regular forces, is charged with

Injuring his arms.

In that

He, at Aldershot, on 25th October, 1896, damaged his rifle to the extent of ten shillings (10s.).

A. He should be charged with "*wilfully* injuring his arms" in that he . . . *wilfully* damaged his rifle, etc. **S. 24.**

P.C. 98 **Q**. An officer's charger is found badly stabbed and the officer's regimental saddle cut to bits and destroyed. There is very strong evidence that the soldier-groom in charge was the culprit. Can the man be tried by court-martial? If so, write out the charges, assuming all necessary details.

A. Firstly:—*Ill-treating a horse used in the public service.*

In that

He, at Warley, on the 1st of June, 1898, while acting as groom to Captain S., Essex Regiment, stabbed with a knife the horse of which he had charge.

Secondly:—*Wilfully injuring the property of an officer.*

In that

He, at Warley, on the 1st of June, 1898, wilfully injured by cuts with a knife the regimental saddle of Captain S., Essex Regiment, thereby causing damage to the amount of—. **S. 24.**

S. 01 **Q**. A soldier is charged with wilfully injuring his arms by damaging his rifle. The court find him guilty of injuring his arms but "not wilfully," and place him under stoppages. Write out a suitable minute on the case for the confirming officer.

A. The court will assemble to re-consider their finding. The essence of the charge lies in the word "wilfully," and if the court do not consider the evidence proves the charge as stated they must find the accused not guilty. **R. 43, 52.**

Q. Write a short minute, pointing out the errors or alterations required in the following charges:— S. 02

Private D.

Losing by neglect regimental necessaries.

In that

He, at Aldershot, on 15th December, 1902, was deficient of the following articles of regimental necessaries belonging to Private X.Z., which were left in his care, namely:—

Private E.

Disgraceful conduct.

In that

He, at Aldershot, on the 12th December, 1902, used the following disgraceful and insulting language to Mrs.—— viz. ——

A. Private D cannot be charged under S. 24 with losing the property of another person. He might be charged under S. 18 or S. 40, according to circumstances.

Private E. is not guilty of disgraceful conduct, but might be charged under S. 40.

Q. Private A. is charged with C. 04

Conduct to the prejudice of good order and military discipline.

In that

He, at Aldershot, on the 1st June, 1904, after having been awarded punishment by his C.O., said to Corporal J. Thomson, Yorkshire Regiment, "I will be revenged on you for this."

Private B. is charged with

Drunkenness on Duty.

In that

He, at Aldershot, on the 5th June, 1904, was drunk and unable to parade for guard, for which duty he had previously been warned.

Criticize the above charges.

A. 1. S. 40 cannot be used for offence specifically laid down in Act. The man should be charged with "using threatening language to his superior officer." **S. 8**

2. The man should be charged with "drunkenness," and the fact that he was warned for duty brought out in the particulars of the charge. **M. 21, 551.**

P L 10 **Q**. At Colchester, on the 1st May, 1910, while the —— Battery, —— Brigade, R.F.A., Territorial Force, was sent out for training, No. 789, Gunner X., of that battery, was drunk on picquet duty. Prepare a charge-sheet.

A. Take care the man is fully described as a "soldier of the Territorial Force, out for training." Charge with "drunkenness," in that he, at ………… on……… when on picquet duty, was drunk. **M. 21, 533, 551.**

P.C. 98 **Q**. At Aldershot, on 1st November, 1898, No. 1,000, Lance-Sergeant A.B., the Blankshire Regiment, was reported absent without leave. He remained absent till the 3rd November, 1898, when he was found drunk in his quarters. It was ascertained that he had sold his great-coat. Write out the charge for his trial by court-martial.

A. CHARGES.

Firstly :—*Absenting himself without leave.*

In that

He, at Aldershot, on the 1st November, 1898, absented himself without leave, and remained so absent until the 3rd November, 1898.

Secondly :—*Making away with by selling his clothing.*

In that

He, at Aldershot, on or about the 1st November, 1898, sold to —— for the sum of ten shillings, one great-coat value two pounds.

(The drunkenness would be brought out in the evidence or might be made the subject of a distinct charge and render the accused liable to a fine of £1. The accused would be sentenced to the full amount of the value of the coat, but, if it be recovered, no more should be stopped from his pay than is necessary to make good the expenses and damage to the government property.)

S. 15, 24, 138; M. 21, 551.

Q. A soldier appears on parade without one of his medals. Can he be arraigned before a court-martial on the alternative charges of— E.C.92

1. Making away with the medal by pawning, selling, etc.?
2. Losing the medal by neglect?

Give reasons for your answer.

A. 1. When a man is unable to produce his medal, the company commander will record all available evidence as to the loss and submit the same to the C.O., who will record his opinion as to whether the loss occurred wilfully or otherwise. If the C.O. is of opinion that the man has designedly made away with his medal, he may be tried on charge (1). Application must be made to the War Office in cases where the replacement of a lost medal is recommended.

2. Losing by neglect a military decoration is not an offence and charge (2) is invalid.

S. 24; K. 1754.

Q. Consider the following charge and frame another if you consider it is unsound. P.C.03

Captain B ——, Frontier Regiment, an officer of the Regular Forces, is charged with

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

In that

He, at Chatham, on the 1st March, 1903, falsely accused Captain A——, —— Corps, of receiving a bribe from X. ——, a contractor, and on the same day, when in arrest, left the station without leave of his C.O.

A. Instead of above charge use the following two charges:—

Firstly:—*Making a false accusation against an officer, knowing it to be false.*

In that

He, at Chatham, on the 1st March, 1903, stated that Captain A——, —— Corps, had received a bribe from X——, a contractor, and knowing the said statement to be false.

Secondly:—*When in arrest escaping.*

In that

He, at Chatham, on the 1st March, 1903, without the sanction of his C.O., left the barracks of the Frontier Regiment, to the precincts of which he was, by the terms of his arrest, restricted. **S. 22, 27.**

S.E. 98 **Q.** Comment on the following statement of offences:

Gunner B., in charge of mules in a mountain battery, is charged with "Ill-treating a horse used in the public service."

A. Correct. The term "horse" includes mule. **S. 24.**

E C. 90 **Q.** No. 203, Private Thomas Baker, 1st Battalion Royal Scots, is found to be an army reserve man of the Essex Regiment, who has wrongfully enlisted (at Leith on the 1st March, 1889). Frame a charge for his trial by court-martial. May the prisoner's C.O. dispose of the case without reference to superior authority?

A. 1. *Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the Justice before whom he appeared for the purpose of being attested.*

In that

He, at Leith, on the 1st March, 1889, when he appeared before A.B., a justice of the peace, for the purpose of being attested, to the question put to him, "Have you ever served in the Army?" answered "No"; whereas he had served, as he well knew, in the Essex Regiment.

2 No. **S. 33; K. 487.**

Q. The following is an instance of a bad charge, explain the reason why. **P.C. 91**

No. 1,000, Private A—— B——, 1st Battalion —— Regiment, a soldier of the regular forces, is charged with

Ill-treating a soldier.

In that

At ——, on or about ——, he struck and kicked Private C—— D——, of the same regiment, whilst he was lying on the ground, so that he had to be removed to hospital.

A. This is not an offence specifically mentioned in the Army Act; a N.-C. officer could be charged with "ill-treating a soldier," S. 37, but a private could not. The offence should be charged under S. 40.

Q. Lance-Corporal R. Jones, 1st Battalion Hampshire Regiment, struck with his fist, in the face, Private A. Brown, of the same battalion. Frame a charge. **P.L. 09**

A. *Striking a soldier.* **S. 37.**

Q. A N.-C. officer of the Royal Artillery is to be tried at Cairo for striking a soldier of the Egyptian Army. Frame a suitable charge. **S. 93**

Conduct to the prejudice of good order and military discipline.

In that

He, at Cairo, on ——, assaulted ——, a soldier of the Egyptian Army, by striking him across the head with a cane.

(As a soldier of the Egyptian Army is not subject to the Army Act, a charge of "ill-treating a soldier" under S. 37 would not be legal.) **S. 40.**

Q. Frame a charge against a pay-sergeant for deficiency of public moneys (theory of negligence negatived). Note points to be proved. **P.L. 04**

A. Charge under S. 17.

Prove 1. He was in position of pay-sergeant.
2. He received the money.
3. He did not pay out the money received.
4. The money that he had in hand was deficient.

It rests with the sergeant to disprove any of the above, or explain how deficiency arose.

S. 94 **Q.** Frame a charge for trial by court-martial on the following facts:—

Sergeant F. —— was the caterer of a regimental Sergeants' Mess.

On examination of his accounts at the end of his oatership, a discrepancy for which he is unable to give a satisfactory account, amounting to £21 7s. 6d., is found to exist between the value of liquor sold and the amount of daily takings paid in to the treasurer.

A. *Neglect to the prejudice of good order and military discipline.*

In that

He, at ——, between —— and ——, when acting as caterer of the Sergeants' Mess of the —— Battalion —— Regiment, negligently conducted the supply of refreshments authorized to be issued therein, and through such negligence caused a loss to the said Sergeants' Mess of £21 7s. 6d.

(The above charge might also be in the alternative to one of "embezzling money belonging to a regimental mess.") **S. 18, 40.**

Q. Sergeant D. while in charge of the Sergeants' Mess has
P.C. 04 watered the beer in cask. As C.O. deal with the case.

A. If a distinct act of fraud could be proved, he might be charged under S. 18 for

Such an offence of a fraudulent nature as is mentioned in Sub-section 5 of Section 18 of the Army Act.

In that

He, at ——, on or about ——, when in charge of the Sergeants' Mess of the —— Regiment, with intent to defraud, added water to a cask of ale belonging to the stores of the said mess.

Q. The following is a faulty charge. Point out the errors. P.C. 97

Committing a civil offence, that is to say, wounding.

In that

At, ——, on ——, He did wound Private C., of the same regiment, by the discharge of his rifle when practising on the rifle range.

A. To constitute the civil offence of wounding it must be alleged that it was done "unlawfully and maliciously," or "with intent to do grievous bodily harm." In this case the act of firing was a lawful one, and the result was due to either accident or want of care. **S. 41 ; M. 95.**

Q. Private A., while on fatigue in the officers' mess, steals a watch, value £2, the property of the messman, who is a civilian. Frame the charge for trial by district court-martial. P.L. 08

A. *Committing a civil offence, that is to say, stealing.* If the evidence be weak an alternate charge might be necessary of

Committing a civil offence, that is to say, receiving stolen goods knowing them to be stolen.

S. 41 ; M. 556.

Q. Private Y. Z. 2nd Battalion —— Regiment, at Plymouth on the 2nd March, 1903, about 3 a.m., was seen breaking open the door of Mr. Hope's residence, at No. 10, High-street, and a silver cup, value £5, the property of Mr. Hope, was afterwards found on his person. Write out a charge. P.C. 03

A. *Committing a civil offence, that is to say, Burglary.*

In that

He, at Plymouth, on the 2nd March, 1903, at about 3 a.m., broke into the dwelling-house of Mr. Hope, No. 10, High Street, with intent to commit a felony, and feloniously took therefrom a silver cup, valued at £5.

S. 41 ; M. 556.

P.C. 92 **Q.** The following is an instance of a charge that could not be legally upheld. Comment on it and explain why.

Committing a civil offence, that is to say, Burglary.

In that

He, at Portsmouth, on the 30th December, 1891, entered the regimental canteen through an open window at 6.30 a.m., with intent to commit a felony therein.

A. To constitute the crime of burglary it is necessary that the *breaking* and *entering* a dwelling-house is at *night.*

In this instance the prisoner did not *break into* the house, as the window was open, and he did not commit the offence *at night,* which in these cases means the interval between 9 p.m. and 6 a.m. **M. 103, 104.**

S. 08 **Q.** How would you propose to frame a charge to deal with a fraudulent offênce which it would be difficult to bring under the head either of "embezzling" or "stealing"?

A. "*Committing a civil offence, that is to say, fraudulent misappropriation of property.*" **S41.**

SECTION XXI.

WITNESSES.

Q. What steps are to be taken to secure the attendance of a military witness when he is not serving in the district in which the court is held? C. 09

A. Apply to the brigade commander under whom the witness is serving, stating the probable day of the assembly of the court. **K. 571.**

Q. A soldier in arrest, on being warned for trial, gives the name of a civilian whom he desires to call in his defence. What steps should be taken to ensure the attendance of the witness? **P.L. 06**

A. A witness whose attendance can reasonably be procured will be summoned to attend by order under the hand of the convening officer, the judge-advocate, the president of the court, or the C.O. of the prisoner.

The summons must be served personally by a person in authority, such as a constable. The person requiring the attendance of a witness may be required to undertake to defray the cost of his attendance. **S. 125; R. 78.**

Q. In the event of the witness not obeying the summons to attend, what action should be taken? **S.E. 06**

A. The court-martial should take evidence on oath as to the service of the summons, and the tender of expenses. The president should then forward a certificate through the convening officer, to the Army Council, reciting the facts and attaching a certified extract from the proceedings. **R. 78.**

Q. You are president of a court-martial when the case for the prosecution entirely depends on the evidence of a civilian witness. On being called he is not forthcoming. State what course you would adopt— S. 94

(*a*) As regards the absent witness.

(*b*) As regards the case you are trying.

A. (*a*) The court should adjourn for a hour or so, and endeavour to procure attendance of witness. If on re-assembly the witness is not forthcoming, the court should take evidence on oath as to the service of the summons and the tender of expenses. The president should then forward a certificate, through the convening officer, to the Army Council, reciting the facts and attaching a certified extract from the proceedings.

(*b*) If proper steps have not been taken to procure the attendance of the witness, or if the attendance of the witness could not *reasonably* be procured before the assembly of the court, the court should adjourn and report the circumstances to the convening officer.

R. 78, 79.

S.E. 02 **Q**. On what grounds could a witness for the prosecution be objected to by the accused as being incompetent to give evidence before a court-martial?

A. 1. That the witness is being jointly arraigned and tried with the accused. (If the evidence of such a person is required, he must be released or a separate verdict of not guilty taken against him).

2. That the witness is the wife of the accused, or the wife of a prisoner tried jointly with him. (The objection does not apply when the trial is for violence inflicted by the husband on the wife or *vice versa*, or when husband or wife prosecutes the other for some offence relating to property, and in a few other cases.)

3. That the witness is incompetent to give evidence by reason of extreme youth, want of understanding, or similar causes.

4. That the witness is a member of the court-martial or judge-advocate to the court.

(A member of the court-martial or the judge-advocate might give evidence for the defence.)

S. 50; R. 77; M. 76.

Q. Explain how the Criminal Evidence Act of 1898 affects the question of the competency of a witness to give evidence. S. 04

A. A person charged can (if he applies to do so) give evidence for the defence, but cannot give evidence for the prosecution against a jointly charged person. The wife of a person charged can (on his application) give evidence for the defence, but (except in a few special cases) cannot be called upon to give evidence for the prosecution.

R. 80; M. 76.

Q. Distinguish between the "competency" and "credibility" of a witness before a court-martial. S E. 10

A. Every sane person of mature age is a *competent* witness, though not necessarily a *credible* one. A convict or an atheist is not disqualified from giving evidence on moral or religious grounds, but his character may be such as to throw grave doubts on the value of his evidence.

Exceptions.—A jointly arraigned prisoner or his wife; a judge-advocate or member of the court-martial, though otherwise competent, cannot give evidence for the *prosecution.* **S. 50; R. 77; M. 76, 77.**

Q. What is the rule as to a husband giving evidence against his wife, and *vice versa?* Mention any exceptions to this rule. P.L 91

A. 1. Husband and wife are not competent to give evidence against each other.

2. Except when the trial is for violence inflicted by the husband on the wife, or *vice versa,* or when the husband or wife prosecutes the other for some offence relating to property.

There are also a few other specially enacted exceptions, such as those referred to in the schedule to the Criminal Evidence Act of 1898. **M. 76.**

P.C.04 **Q**. A soldier is charged with stealing goods from t married quarters of a sergeant. Objection is raised the sergeant's wife giving evidence.

A. The objection is not valid. The wife of t N.-C. officer is just as competent to give evidence as a other woman. The wife of the *accused* would not competent to give evidence against him in this case, b the wife of a witness is in no way incompetent to gi evidence to corroborate that of her husband.

R. 80; M. 76.

S.E.08 **Q**. Comment on the competency or otherwise as witness of a deaf and dumb person.

A.

1. He is a competent witness.
2. Evidence may be given by writing or by sign or in any other manner in which he can mak it intelligible, but such writing must b written, and such signs made, in open court.
3. Evidence so given is deemed to be or evidence. **M. 77.**

A.92 **Q**. Gunners B.C. and C.D. are being jointly tried b court-martial for stealing Government stores, but th evidence appears to be insufficient to secure a convictio Can the prosecutor obtain the evidence of one of thes men against the other? If so, explain the procedure.

A. Yes, provided that the accused who is to giv evidence is released or a separate verdict of not guilt taken against him. An accused so giving evidence i popularly said to turn King's evidence. **M. 76.**

P.C.96 **Q**. A soldier is being tried and the prosecution produce a witness who is himself awaiting trial for the sam offence. The accused objects to the reception of th evidence on the ground that the witness had been neithe tried nor pardoned. Deal with the question. (Questio abbreviated.)

A. The objection would only be valid if the prisoner were tried together. In this case the witness is bein tried separately, and his evidence is admissible.

R. 15; M. 76.

Q. State when the evidence of military witnesses P.L.01
ould be taken on oath.

A. Before a C.O., who has power to deal with the se summarily, when the accused wishes it. Before court-martial always, or in lieu of it a solemn declara- on. Before a court of inquiry on illegal absence or hen it concerns prisoners of war or in cases when the nvening officer so decides. **S. 46; R. 82, 124, 125.**

Q. A witness declines to take an oath on religious E.C.97
ounds. Describe the procedure.

A. The court, if satisfied with the sincerity of this jection, will allow the witness to make a solemn decla- tion instead of being sworn, *i.e.*, " I, ——, do solemnly omise and declare that the evidence, etc."

(A witness who refuses to be sworn or make a declara- on is liable to punishment for contempt of court.)

S. 28, 52; R. 82.

Q. The British Army having to serve in all parts of P.C.90
ie world, native witnesses of every race appear before urts-martial. State what are the general rules with gard to the reception of their evidence and modes of vearing them.

A. The competency of a witness to give evidence is no way altered by reason of his nationality. An oath r declaration) may be administered in such form and ith such ceremonies as the person to be sworn declares be, according to his religion, binding on his conscience. the case of natives of India it is advisable to follow ie practice of the civil courts in the district where the ial is held. **R. 30, 82.**

Q. You are acting as prosecutor and inform the P.C.11
urt that, in order to rebut the evidence given by a itness of the accused, you wish to give evidence your- lf. What action should the court take?

A. The court would refuse permission. The rosecutor should never himself give evidence nless it be to prove a date or other formal matter, or produce documents, but even formal matter should not be left to be proved by him if it can possibly be helped. But if on active service, or in a very exceptional case, a trial cannot be postponed, the prosecutor may give evidence for the prosecution, but it is essential that his evidence should be given before that of any other witness, and that his sworn statements as a witness should be kept quite distinct from his statements made as prosecutor. **R. 39, 77.**

P.C. 97 **Q**. A member of a court-martial is possessed of certain information concerning the offender which is unknown to the other members of the court, and which has a material bearing on the case. What course should he take?

A. A member of the court must not communicate privately to other members of the court any special knowledge that he has, or thinks he has, of the guilt or innocence of the accused, or act on private grounds of belief. If he wishes to give evidence he must be sworn like any other witness, and be subject to cross-examination. **M. 77.**

S.E. 09 **Q**. At a court-martial the prosecutor desires to call a witness whose evidence is not contained in the summary of evidence. Should this be allowed?

A. Yes, but due notice should beforehand be given to the accused. If the witness is called without such notice the accused may demand that the court shall adjourn after taking the evidence of the witness, *or* that the cross-examination of the witness shall be postponed. **R. 76.**

S.E 09 **Q**. In what circumstances may the Court call witnesses?

A. The court may re-call a witness or call a new witness at any time before the finding, if they consider it necessary in the interests of justice.

The court will do well to act on the principle that the re-call of a witness should be for the satisfaction rather of the court themselves than of either party, and especially not for the object of supplying the omission of a prosecutor to prove a material part of his case.

R. 86; M. 47.

Q. A witness before a court-martial has given his evidence and retired. Under what circumstances can he be re-called to give further evidence? **E.C. 93**

A. 1. *At the request of the prosecutor or the accused* a witness may, by leave of the court, be *re-called* at any time before the time for the second address of the accused, *for the purpose of having any question put to him* through the president. An accused who himself gives evidence may similarly be re-called.

2. Where the accused or his witnesses have introduced *new matter* which the *prosecutor* could not reasonably have foreseen, *he* can, with the leave of the court, before the time for the second address of the accused, *call* or *re-call* a witness to *give rebutting testimony.*

3. Where the accused has called *witnesses as to character*, or obtained from the prosecutor's witnesses evidence of his good character, the *prosecutor*, before the time for the second address of the accused, may *call* or *re-call* a witness for the purpose of *proving previous convictions* or conduct book entries.

4. The *court* may *call* or *re-call* a witness if they consider it necessary for the ends of justice at any time before the finding.

(No witnesses should, as a rule, be re-called after the time for the second address of the accused.) **R. 86; M. 47.**

Q. During the course of a trial the accused produces a witness whose evidence is not contained in the summary. To rebut the evidence given by that witness the prosecutor wishes to call another witness, whose name is not contained in the summary. What action should the court take? **P.C. 11**

A. With the leave of the court, a witness may be called before the time for the second address of the accused, for the purpose of rebutting any material statement made by a witness for the defence upon his examination by the accused, on any new matter which the prosecutor could not reasonably have forseen. **R. 86; M. 47.**

P.C. 08 **Q**. The prosecution and defence at a trial being completed, the court is closed for its finding. Can the court recall a witness to clear up a point in doubt?

A. Yes, but the court must be re-opened, and the questions asked should be limited to one or two relating to the evidence previously given by the witness. Questions should not be asked in order to supplement any negligent conduct on the part of the prosecution. **R. 86.**

S.E. 07 **Q**. An accused in his defence calls witnesses to testify to his good character. Describe the manner in which you would proceed, as prosecutor, to rebut such evidence, if you had reason to believe that it was unreliable.

A. 1. Cross-examine the witnesses as to character, or the accused if he gives evidence himself.

2. Before the time for the second address of the accused, call or re-call witnesses for the purpose of proving a previous conviction or entries in the conduct book. **R. 86; M. 84.**

C. 05 **Q**. Describe how the examination of a witness before a court-martial is conducted.

A. The examination of a witness is conducted by means of questions put orally to him by the prosecutor, accused, or judge-advocate, or the court. The witness addresses his reply to the court. The evidence is usually taken down in a narrative form in as nearly as possible the words used, but if the court or any of the parties to the trial think it necessary, each question and answer should be taken down verbatim.

The evidence of a witness as taken down should be read to him after he has given his evidence, and before he leaves the court, and such evidence may be explained or corrected by the witness.

The examination of a witness by the party calling him is termed the *examination-in-chief* or *direct examination.* The opposite party have a right to *cross-examine* the witness, and at the conclusion of the cross-examination, the party who called the witness may *re-examine* him, but the re-examination must be directed exclusively to the explanation of matters referred to in cross-examination.

R. 83, 84; **M.** 47, 81-84.

Q. What precautions are taken to prevent witnesses being influenced by the procedure of the court and the evidence of other witnesses? A. 91

A. Each witness is examined separately, and witnesses (other than the prosecutor and the accused) while not under examination ought not to be in court.

The accused should be warned that if he gives his evidence after hearing the evidence of other witnesses for the defence, the value of his evidence may be considerably discounted.

In order to prevent witnesses being influenced by hearing the charge read, they are usually ordered out of court when the prisoner is arraigned. **R.** 41, 81; **M.** 47.

Q. What is meant by a "hostile witness" and what is allowed in the examination of such a witness? S.E. 05

A. 1. "Hostile" to the person who calls him.

2. The court should allow the person calling the witness to cross-examine him, and treat him as if he were a witness called by the other side, except that (as he had originally been put forward as worthy of credit by the person calling him) his good character must not be impeached. **M.** 82.

P.L.07 **Q**. What are leading questions? When may they be used at courts-martial?

A. A *leading question* is one suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts, as to which the witness is to testify.

They are not *admissible* in the examination-in-chief except (*a*) when they refer to matters which are simply introductory, or which, though material, are not disputed, (*b*) in order to call the attention of a witness to any person or thing for the purpose of identification or assist a defective memory, (*c*) to help youthful or unintelligent witnesses, (*d*) in the case of hostile or unwilling witnesses. They are admissible in cross-examination and are used to shake the accuracy or credibility of the evidence that has been given. **M. 81-83.**

P.L.93 **Q**. With what object are irrelevant questions put to a witness? How is the correctness of the evidence given by witnesses ensured?

A. Irrelevant questions are often put in cross-examination for the purpose of putting a witness, who is supposed to have learnt up his story, off his guard.

The evidence of every witness is to be read over to him before he leaves the court, and he should be asked whether it is correct. Any explanation or correction given by the prisoner is entered on the proceedings.

R. 83; M. 83.

P.C.08 **Q**. At a trial for "using threatening language," the prosecutor asks Sergeant A. (1) "Is the accused of a very quarrelsome disposition?" (2) "Did he come into Stable A. on the morning of the 15th June and threaten to break your neck when he got a chance?" In cross-examination the accused asks Sergeant A. (3) "Did you not call me a d——d liar?" (4) "Why is it you have always been down upon me?" Comment on this.

A. 1. Not allowed. Character not admissible as evidence of guilt.

2. A leading question—not allowed in examination-in-chief.

3 and 4. Admissible. The credit, character, or motives of a witness may be impeached in cross-examination. **M.** 59, 81, 83.

Q. During the hearing of the evidence for the prosecution the accused objects to a witness reading extracts from his diary. What should be the ruling of the court? S.E. 08

A. 1. A witness may not read his evidence, but if his recollection fails him he may refer to any writing made by himself *at the time* of the transaction in question or when it was fresh in his memory. Any writing referred to must be produced in court, and the witness is liable to cross-examination in respect of it.

2. A diary or private writing is not in itself evidence. A witness must swear positively as to the fact, or that he has a perfect recollection that the fact was truly stated in the diary at the time it was written. **M.** 73.

Q. With what object are irrelevant questions put to a witness in cross-examination? As president of a court-martial state to what extent you would be prepared to disallow questions of this nature. P.C. 07

A. 1. *Irrelevant questions* are admissible in cross-examination, and are used for the purpose of putting a witness, who is supposed to have learnt up the story, off his guard.

2. *Limit to questions.*—Questions should not be allowed which assume that facts have been proved which have not been proved, or that answers have been given contrary to the fact. A witness is not to be pressed as to any facts which, if admitted, would not affect the matter at issue, or the credit of the witness. **M.** 8.3

S.E. 98 **Q**. After the evidence of a witness has been read over to him, several corrections are suggested. How is a correct record ensured?

A. Any material alteration or explanation should be inserted at the end, and not by way of interlineation or erasure. Minor alterations may be verified by the initials of the president. **R. 83; M. 47.**

S.E. 07 **Q**. A soldier is charged with "offering violence to his superior officer," Sergeant X. In cross-examination the accused asks Sergeant X. if he did not take liberties with a woman to whom the accused was engaged. Is such a question admissible?

A. Yes. The accused has a right to show in evidence as palliating, though not justifying his conduct, that he had been provoked to act as he did by the conduct of the sergeant towards the woman in question. **M. 83.**

C. 07 **Q**. How is the right of asking questions, tending merely to discredit, qualified in the case of trials before a court-martial?

A. 1. The right of a counsel asking questions tending merely to discredit is restricted. Where the court are of opinion that the imputation conveyed by a question would, if true, not seriously affect their opinion as to the credibility of the witness, they should disallow the question. If the question be put to the accused the court will have to consider whether under R. 80 he should be compelled to answer.

2. If the question is disallowed, counsel on both sides will refrain from further examining or commenting on the said matter. **R. 92.**

P.C. 07 **Q**. A witness before a court-martial is, as a rule, obliged to answer all questions put to him. State in general terms the various cases in which a witness would be justified in refusing to answer.

A. 1. *Criminating answer.*—No one is bound to answer a question if the answer would, in the opinion of the court, have a tendency to expose the witness (or the wife or husband of the witness) to any criminal charge or to any military punishment. **M.** 78.

2. *Degrading answer.*—When a question tends merely to discredit, and the witness objects to answer, the court, if of opinion that the imputation conveyed by the question would not affect their views as to the credibility of the witness, should disallow the question. **R.** 92; **M.** 83.

3. *Professional secrets.* — A legal adviser is not permitted, unless with his client's consent, to answer questions as to confidential communications that have passed between him *as such legal adviser* and his client (matters in connection with crime or fraud being excepted). Medical men and clergymen are not privileged from the disclosure of communications made to them in confidence, but it is not usual to press for disclosures of communications made to clergymen. **M.** 79, 80.

4. *Official secrets.*—As a matter of public policy, no one can be compelled to answer questions relating to affairs of State, or *official* information of a confidential character, except with the permission of the superior authorities concerned. Witnesses cannot be examined as to evidence given before a previous court-martial, or as to the proceedings or report of a court of inquiry. **M.** 79.

5. *Husband and wife.*—Husband and wife cannot be forced to disclose communications which one has made to the other during marriage. **M.** 79.

Q. (*Abbreviated*). In a murder case a young unmarried woman is witness and is asked, in cross-examination:— P.C. 04

(1). Have you ever had a child?
(2). Did the vicar turn you out of the choir for telling a lie?
(3). When the deceased swore at the accused did not the accused try to calm him?
(4). Come now. I am sure the accused had not a stick in his hand. Was it not his hand only that he raised?

How far is each of the above permissible?

A. (1). Degrading question. May be disallowed by court under R. 92 (B).
(2). Admissible as affecting credibility. **M. 83.**
(3). In the question as given it appears that there is no evidence of the deceased having sworn. Therefore not admissible. R. 92 (E).
(4). Doubtful if permissible under R. 92 (D), as evidence was given that accused had a stick.

(The above is in accordance with military law, but the case would presumably be tried by a civil court.)

P.C. 04 **Q**. (*Abbreviated*). In a cricket match, Sergt. A. gave Private L. out leg before wicket. The private, losing his temper, strikes the sergeant on the arm with his bat on leaving the field. Frame a charge.

A. A charge of "striking his superior officer" might be framed, but the case would probably be summarily treated by the commanding officer. **S. 8.**

P.L. 10 **Q**. (abbreviated). Private A. was tried for stealing goods, the property of a comrade. Sergeant F. gave the following evidence:—

1. Corporal Brown informed me that he had been told that the accused intended to steal boots belonging to Private C.
2. Knowing that Private A. was a bad character and had been convicted of theft, I instructed Corporal Brown to keep a watch on his movements.

3. At about 7 p.m. the same day I saw the accused come out of the barrack-room, etc., etc.

Comment on the above.

A. (1). Not admissible. Hearsay evidence. **M. 68.**
(2). The reference to the accused's character and previous conviction is not admissible as evidence of his guilt. **M. 59.**
(3). Admissible.

Q. Private A. is charged with stealing money from the quarters of Sergeant X. A witness for the prosecution states: "(1) I know the prisoner is always betting on races and owes money all round. (2) On the day in question I saw him go, about 5 o'clock, into Sergeant X.'s quarters. (3) An hour later he came to me, and pulling money out of his pocket, said, 'Now, I can pay everybody.' (4) Sergeant X., passing at the time, said to him, 'You thief; I believe that is my money.'" How far are the above statements admissible? S.E. C6

A. (1). No. The character or general reputation of a person is not admissible as evidence of his guilt. **M. 59.**
(2). Admissible as showing the entry into Sergeant X.'s quarters.
(3). Admissible as showing that the accused was in possession of money.
(4) Not admissible as a proof of theft, but may be admitted to bring out the demeanour of the accused when he heard the accusation. **M. 68.**

Q. Under what circumstances may the accused or his wife give evidence as witnesses for the defence? P.C. 03

A. If the accused employs counsel and elects to make a statement in addition to the address of his counsel he cannot give evidence, but in all other cases he can give evidence on his own behalf and may be cross-examined theron.

The wife of the accused may not be called as a witness for the defence except on the application of her husband. **R. 80, 94.**

P.C. 00 **Q**. The accused who is being tried by court-martial elects to give evidence himself. To what extent is the power of the prosecutor to ask him questions in cross-examination limited?

A. He shall not be required to answer any questions tending to show that he has been guilty of any offence other than that with which he is charged, or is of bad character, unless—

(1). The proof of the commission of such other offence is admissible evidence to show that he is guilty of the offence charged;

(2). He has given or procured evidence of his own good character or attacked the character of the prosecutor or his witnesses;

(3). He has given evidence against another prisoner charged with the same offence.

R. 80; M. 78.

S.E. 09 **Q**. The accused at a court-martial elects to give evidence. Can he, in cross-examination, be asked questions tending to show that he is of bad character?

A. Not as a rule. For exceptions see last answer (2) and (3).

P.L. 01 **Q**. State briefly the law as to the cross-examination of an accused who elects to give evidence himself on his trial by court-martial.

A. The accused may be asked any question in cross-examination, notwithstanding that it would tend to convict him of the offence charged. But (as shown above) he cannot as a rule be asked questions as to other offences, or as to bad character, nor can he be asked questions which would be inadmissible or be disallowed in the case of an ordinary witness. **R. 80, 92.**

E.C. 04 **Q**. Point out the extent to which the position of an accused is similar or different from that of an ordinary witness.

A. He is sworn, gives evidence, and has the privileges of an ordinary witness. He cannot be asked criminating questions as to offences other than those with which he is charged, or questions as to his character except as above stated. **R. 80; M. 78.**

Q. Sergeant I.J. is being tried by court-martial on a charge of stealing government stores, and J.K., a civilian, is one of the witnesses for the prosecution. The prosecutor, wishing to show what became of the stores, asks J.K., "Did your wife ever buy any blankets from the accused?" J.K. objects to answer this question. Should the court require the question to be answered or not? Give your reasons. S.E. 93

A. No. The answer might render the wife of the witness liable to prosecution under S. 156 of the Army Act, and the husband is therefore not bound to answer. **M. 78.**

Q. A civilian witness, who is under cross-examination, is asked where he obtained a quantity of government stores which are shown to have been in his possession, and he appeals to the president of the court for permission to decline to answer this question. How should the point be decided? P.L. 91

A. If, in the opinion of the court, the answer to the question would expose the witness or his wife to a criminal charge, they should allow the objection; but otherwise an answer must be given. **M. 78.**

Q. At a court-martial held for the trial of a soldier on a charge of theft, Private S., who is a witness for the prosecution, in cross-examination is asked the following questions by the accused:— P.C. 09

(*a*) Do you not owe me two pounds?

(*b*) Were you not serving in the 1st ——shire Regiment, and did you not desert from that regiment a short time ago?

The witness objects to answer. As President, how would you decide?

A. The witness is bound to answer the question (*a*), but need not answer question (*b*), as his answer might expose him to a criminal charge, *i.e.*, desertion or fraudulent enlistment. **M. 78, 83.**

E.C. 95 **Q.** Corporal B. of the Lancashire Regiment is called to give evidence for the prosecution at a court-martial. On being cross-examined by the accused he is asked: "Were you not, five years ago, a private in the Essex Regiment?" "Are you not commonly known in the regiment by the nickname of Ananias?" Is the witness obliged to answer these questions? Explain the law on the subject.

A. 1. If the answer would render the witness liable to trial or military punishment he need not answer, otherwise he must. **M. 78.**

2. If the court are of opinion that the imputation conveyed by the questions would, if true, seriously affect their opinion as to the credibility of the witness, they should require the witness to answer, otherwise they should disallow the question. **R. 92.**

S. 89 **Q.** A lawyer, a doctor, and a priest are called as witnesses before a court-martial, and severally refuse to answer questions relating to matters confided to them in their professional capacity. Explain to what extent the refusal of each is justifiable.

A. 1. *Lawyer.*—A legal adviser need not answer any questions, without the express consent of his client, as to any communications made to him by or on behalf of his client, or as to any advice given by him to his client. This privilege does not extend to criminal communications if made in furtherance of a criminal purpose, knowledge of a crime or fraud, or as to any facts that the lawyer became acquainted with in a capacity other than that of legal adviser to the accused.

2. *Doctor.*—Medical men are not privileged from the disclosure of communications made to them in confidence, and must answer the questions put to them.

3. *Priest.*—It is not usual to press for the disclosure of communications made to clergymen, and a Catholic priest invariably refuses to answer questions as to matters revealed to him in confession, though, legally, he has no right to refuse to answer. **M. 79, 80.**

Q. "Evidence cannot be given to contradict the answer of any witness to a question which only tends to shake his credit by injuring his character." State the exceptions to the above rule. P.C. 01

A. 1. Where the witness is asked whether he has ever been convicted of any felony or misdemeanour.

2. Where he is asked a question tending to show that he is not impartial.

3. Where he has previously made inconsistent statements.

4. Where he can be shown to be a notorious liar. **M. 83.**

Q. Comment on the following case:—A witness before a court is asked (in cross-examination) if he has previously been convicted of theft, and refuses to answer. S. 09

A. The question is a proper one, and if the witness denies or refuses to answer, the person putting the question may bring evidence to prove the fact suggested. **M. 83.**

Q. Sergeant H.J. is being tried on a charge of having embezzled public money, and in his defence calls as a witness a civilian, J.L. This witness, on being cross-examined by the prosecutor, and asked if he had been tried for perjury within the last six months, answers "No." Can the prosecutor call evidence to show that J.L. was actually so tried? Give your authority. P.C. 94

A. Yes. Perjury is a misdemeanour, and the prosecutor can bring evidence to prove that the witness had been convicted. The course is authorized by statute. **M. 83.**

SECTION XXII.

EVIDENCE.

C. 96 **Q**. What principal advantages are obtained by having definite rules of evidence? Explain how each advantage is gained.

A. 1. *It assists the court* by concentrating their attention on the issue before them, and preventing them being bewildered or misled by irrelevant statements.

2. *It secures fair play to the accused*, as it limits the evidence to the specific charge which he comes prepared to meet.

3. *It protects absent persons* against statements affecting their character.

4. *It prevents waste of time* by confining the evidence to the points at issue. **M. 56.**

E.C. 90 **Q**. What is evidence?

A. 1. *Evidence* is the testimony upon which facts are believed, and consists of—

(a) Statements made by witnesses (or by the accused in court) under legal sanction in relation to matters of fact under inquiry or *oral evidence*.

(*b*) Documents produced for the inspection of the court, or *documentary evidence*.

P.L. 98 **Q**. "The rules of evidence to be adopted in proceedings before courts-martial shall be the same as those which are followed in civil courts." Where is the above declaration to be found?

A. S. 128.

Q. What is meant by the expression "shall be judicially taken notice of?" P.C.10

A. That the court will recognize a matter without formal evidence. For example, see R. 74; M. 57, 58.

Q. Explain the meaning of the following terms:— Leading question, re-examination, circumstantial evidence, presumptions, public documents, hearsay evidence, dying declarations. P.L.93

A. 1. A *leading question* is one suggesting the answer which the person putting the question wishes or expects to receive, or suggesting disputed facts as to which the witness is to testify. They can nearly always be answered by "Yes" or "No." **M. 81.**

2. *Re-examination.* — At the conclusion of the cross-examination the person who called the witness may, if he pleases, *re-examine* him, but the re-examination must be directed exclusively to the explanation of matters referred to in the cross-examination. **M. 84.**

3. *Circumstantial evidence* is testimony as to certain facts from which the fact in question may be inferred or presumed. With regard to this class of evidence, the facts on which it is sought to found the inference of guilt must be visibly and evidently connected with the crime. **M. 66.**

4. *Presumptions* are rules of law or affirmations of the law which justify a court in drawing a particular inference from a particular fact or evidence, *e.g.*, a child born in wedlock is presumed to be legitimate.

5. *Public documents* are held to be the acts of public functionaries in the execution of their business, and may always be proved by secondary evidence such as a certified copy or extract. **M. 64.**

6. *Hearsay evidence* means the statements

whether in writing or not, made in the absence of the accused by persons not called as witnesses, and who, therefore, are not on oath nor liable to cross-examination. **M. 68.**

7. *Dying declarations* are made (in trials for murder and manslaughter) by a person who is killed, as to the cause of his death, or as to any of the circumstances of the transactions that resulted in his death. To make them admissible there must be an expectation of impending death and no hope of recovery. **M. 68, 69.**

P.C.09 **Q.** Explain and illustrate by examples the difference between direct and circumstantial evidence.

A. By *direct evidence* is meant the statement of a person who saw, or otherwise observed with his senses, the fact in question, *e.g.*, A. saw B. fire a pistol at C. and saw C. fall down as if killed.

By *circumstantial evidence* is meant evidence of facts from which the facts in question may be inferred or presumed, *e.g.*, C. is found dead on a road, apparently killed by a pistol bullet; near C. is found a recently-fired pistol of a bore which the bullet found in C.'s head would fit; B. is seen running away from the scene of the murder shortly after the report of a fire-arm is heard; B. is known to have previously purchased the pistol found on the road, etc. Direct evidence is not better than circumstantial evidence, the difference between them being one not of *degree* but of *kind*. **M. 66.**

P.L.92 **Q.** With reference to evidence, state and explain the practice as to the burden of proof.

A. In considering by which side proof must be given, regard must be had to two main rules—

(*a*) That every man is presumed to be innocent until he is proved to be guilty.

(*b*) That he who alleges or denies a fact must prove his statement.

It follows that the prosecution must give evidence as to a crime, or of facts from which it may be reasonably inferred, and that then, and not till then, the accused is bound to prove the facts from which he wishes the court to infer his innocence. If an accused is charged with drunkenness, it is for the prosecutor to prove that he was drunk before the accused can be called upon to prove that he was sober. **M. 58.**

Q. Explain what is meant by "shifting the burden of proof" and illustrate by an example. **P.C. 02**

A. As the trial goes on, the burden of proof may be shifted from the prosecutor to the accused by the proof of facts which raise a presumption of his guilt. The burden of disproving the evidence that raises the presumption then falls on the accused.

When it is proved that an unlawful act has been committed, a criminal intention is presumed, and the proof of justification or excuse lies on the accused. On a charge of murder the law presumes malice, and throws on the accused the burden of justifying or extenuating the act.

Again, a quantity of property known to have been stolen is found in a person's house. A guilty knowledge concerning the theft is presumed, and it rests with the receiver to prove that the articles were innocently received. **M. 59.**

Q. Give examples of the "presumptions" which justify a court in drawing a particular inference from a particular fact of evidence. **P.L. 02**

A.
1. A man found in possession of stolen property is presumed to have a guilty knowledge of the theft.
2. On a charge of murder the law presumes malice from the act of killing.
3. A letter properly addressed and posted is deemed to have been received.
4. A child born in wedlock is presumed to be legitimate, etc., etc. **M. 59.**

Q. What are the four rules given in the Manual of Military Law excluding certain classes of evidence? Give reasons for their non-admission. **P.C. 97**

A. 1. *Rule of Relevancy.*—Nothing shall be admitted as evidence which does not tend immediately to prove or disprove the charge.
2. *Rule of best Evidence.*—The evidence produced must be the best obtainable under the circumstances.
3. *Hearsay.*—Hearsay is not evidence.
4. *Opinion.*—Opinion is not evidence.
1. It assists the jury, secures fair play to the accused, protects absent persons, and prevents waste of time.
2. The production of inferior evidence suggests that there is some sinister motive in withholding the better and more satisfactory evidence.
3. The statements are not made on oath, and the person affected has no opportunity of examining their author.
4. A witness can only depose to the facts which he has seen, heard, or otherwise observed, and it is for the court to draw the inference.
M. 56, 59, 63, 68, 71.

P.C. 90 **Q**. Speaking generally, when is evidence said to be relevant?

A. When it tends either directly or indirectly to prove or disprove the charge; in other words, when it is confined to the points at issue. **R. 60; M. 59.**

S.E. 04 **Q**. May evidence as to the character of an accused person be given before the finding?

A. 1. In order to be relevant, evidence must tend immediately to prove or disprove a charge, therefore the character of an accused is not admissible as evidence of his guilt. "A man shall not be convicted because he has a bad name." For this reason a prosecutor may not give evidence of character (before the finding,) except to rebut evidence to a contrary effect given on behalf of the accused.
2. On the other hand an accused may give evidence himself, or call witnesses to speak

generally as to his character. Evidence of good character cannot avail the accused against evidence of fact, but when reasonable doubt exists as to his guilt, it may tend to strengthen a presumption of innocence. Where intention is a principal ingredient in the offence, evidence as to character, *bearing on the charge*, may be highly important, and serve to explain the conduct of the accused.

M. 59, 60, 61.

Q. With regard to evidence as to the character of an accused before a court-martial, state when it should be given; to what extent it should influence the court, and what difference there is in the procedure, according to the nature of this evidence. **S.E. 93**

A. 1. Evidence as to character may be given (before the finding) by the accused himself or by witnesses called by him, or obtained from witnesses for the prosecution. **R. 40.**

2. Evidence of good character cannot avail the accused against evidence of fact, but where a doubt exists as to his guilt it may strengthen a presumption of innocence.

Where intention is a principal ingredient in an offence, or where presumptive proof only is adduced, evidence as to character *bearing on the charge* may be of great value, *e.g.*, on a charge of stealing, character for honesty would have great weight.

General character, not connected with the charge, does not avail as disproving the charge, but may influence the court in awarding punishment. **M. 60.**

3. The prosecutor may, *before the finding*, produce proof of former convictions and entries in conduct book in reply to evidence to *a contrary effect* given on behalf of the accused, but in all other cases the evidence of the prosecutor as to the character of the accused is given *after the finding*, and only affects the sentence. **R. 40, 46.**

P.C. 95 **Q**. Can the prosecution before a court-martial under any, and if under any, under what, circumstances offer evidence of the accused having committed, or attempted to commit, a similar offence to that for which he is being tried?

A. As a rule such evidence is inadmissible, but where intention, knowledge, malice, or any other state of mind is a necessary ingredient of the offence charged, the commission of the principal act being either admitted or proved, evidence to prove the existence of such state of mind may be given, *e.g.*, on a charge of murder former attempts to kill the deceased are admissible as proof of *intention*; on a charge of uttering base coin, a previous instance of uttering base coin is admissible as proof that the accused *knew* the coin was base; on a charge for disrespectful language, after the words in the charge are proved, evidence may be given that similar language was used on a previous occasion, not in aggravation of the crime charged, but for the purpose of proving the deliberate malice or disrespect imputed in the charge; on a charge of treason, inquiry may be made into the conduct and sentiments of the accused on a previous occasion with reference to the particular act charged, etc. **M. 61.**

P.C. 04 **Q**. An accused is being tried for insubordination. State the law as to the prosecutor producing evidence of previous cases of insubordination.

A. The character or general reputation of an accused is not admissible as evidence of his guilt. For a similar reason the fact that a person accused of an offence committed a like offence on another occasion is not admissible for the purpose of showing that he has a general disposition to commit such offences. But where the commission of the offence is admitted, or proved evidence of previous acts may be given, not in aggravation of the crime, but to show the spirit or intention of the accused. **M. 59, 61.**

P.C. 03 **Q**. A soldier is being tried for using threatening language to Sergeant A. The prosecutor asks a witness

"Have you previously heard the accused use threats to Sergeant A?" Make comments.

A. The question is admissible to prove the existence of vindictive feeling, but not to prove that crime charged has been committed. **M. 61.**

Q. What is the meaning of the "best evidence," and how many witnesses are sufficient for a conviction? P.C. 06

A. That no evidence which leads one to suppose that other and better evidence remains behind can have any weight, as the production of such inferior evidence suggests that there is some secret or sinister motive for withholding the better and more satisfactory evidence.

The law lays down that the evidence shall be the best, but does not define the amount, *e.g.*, one credible witness may, in some cases, be sufficient. The rule in question is more strictly enforced with regard to documentary evidence than with regard to oral evidence. **M. 63.**

Q. "The rule as to best evidence has no application to the difference between direct and indirect evidence." Explain the above quotation. S. 04

A. Circumstantial evidence is not inferior to direct evidence. Witnesses may lie, but facts do not, though they may deceive. The facts on which it is sought (by indirect evidence) to found the inference of guilt must be visibly and evidently connected with the crime, and be inconsistent with any other rational conclusion than that the prisoner was guilty. The best evidence is generally a combination of both direct and indirect evidence. **M. 66.**

Q. What exceptions are there to the general rule that the evidence of one credible witness is sufficient? P.L. 08

A. One witness not sufficient in cases of *treason* and *treason felony*.

In cases of *perjury*, one witness alone is not sufficient without some material and independent corroborative evidence in proof of the statement as to which the perjury is charged. **M. 67.**

S. 03 **Q**. Discuss the question of accepting the evidence of an accomplice and the value of the evidence if accepted.

A. 1. The evidence of an accomplice against his principal and *vice versâ* is admissible, unless principal and accomplice are being tried together. In such a case evidence may be given (for the prosecutor) by releasing the witness or allowing him to turn "King's evidence." An accused who wishes for the evidence in his defence of a jointly arraigned accomplice should claim a separate trial. If an accused has given evidence himself and his evidence tends to criminate another prisoner charged with the same offence, that other prisoner can cross-examine him as to character.

2. The evidence of an accomplice should be received with great caution, and it is the practice to require it to be confirmed by unimpeachable testimony in some material part, and more especially as to the identification of the person or persons against whom his evidence may be received. **M. 76.**

S. 93 **Q**. What is meant by an *accessory after the fact?*

A. When a felony has been committed, a person becomes an "accessory after the fact" if he assists the felon to evade justice (knowing that he has committed a felony). **M. 90.**

P.L. 02 **Q**. Give a summary of the law as to the reception in evidence of the contents of printed or written documents.

A. 1. A verbal account of the contents of a document ment can never be received if the document itself is obtainable.

2. Subject to certain exceptions, a copy of a document is not admissible when the original document can be produced.

3. Public documents are admissible as evidence of the facts they relate, and may be proved by secondary evidence when properly put in by a sworn witness.
4. Private documents are not as a rule evidence of the facts to which they relate, but may be brought forward for other purposes. Copies are seldom admissible. **M. 63, 64.**

Q. With reference to the rule that the evidence produced must be the best obtainable, what two sub-rules must be kept in mind when deciding as to the admissibility of documentary evidence. P.C. 03

A. See last answer 1 and 2. **M. 63.**

Q. State the documents which are admissible in evidence before a court-martial. E.C. 08

A. Attestation papers.
Letters, Returns and Documents respecting service.
Warrants and Orders made in pursuance of the Act.
Records in regimental books.
Descriptive Returns.
Certificates of Conviction or Acquittal, etc.
S. 163, 165; M. 65.

Q. State briefly the law concerning evidence of conviction or acquittal by civil court, and of conviction by court-martial. P.C. 00

A. A certificate issued by the clerk of a civil court is sufficient evidence of the conviction or acquittal of a prisoner by that court. A record in the regimental books or a duly certified copy of the same is admissible as evidence of a court-martial conviction.
S. 163, 164, 165.

Q. Define a private document or writing. How far is a private document admissible as evidence? E.C. 91

A. 1. *Private documents* are all letters, official or private, public accounts, receipts, etc., and any papers which do not come under the head of public documents, and which therefore, cannot always be proved by secondary evidence.

2. Private documents are not admissible as evidence of the facts they relate, but may be used to prove the motive or intention of an accused, or may be admitted as proof of a document having been written, when writing the document is the essence of the charge. For example, the best evidence of having written an insubordinate letter is the letter itself. **M. 64, 71.**

P.C. 09 **Q.** Distinguish between the primary and secondary evidence (of a document).

A. 1. The *primary* evidence of the contents of a document is given by producing the document for the inspection of the court. In some cases a document is required by law to be attested.

The *secondary* evidence of a document is given by producing a duly certified copy, or, in the case of certain public documents, a certified extract therefrom is admissible. **M. 63, 64.**

S. 89 **Q.** Under what circumstances would the secondary evidence of a private document be admissible.

A. (*a*) Where the original is in the possession of the adverse party, and he, having been served with notice to produce it, does not do so.

(*b*) Where the original is in court, but in possession of a person who is not legally bound to produce it, and who, after having been served with a writ, or sworn as a witness, refuses to produce it.

(*c*) Where there is good reason to believe that the original is destroyed or lost.

(*d*) Where the original, by reason of its nature or locality, is not removable for inspection by the court.

(*e*) Where the original is a document for the proof of which by secondary evidence special provision has been made by statute.

M. 63, 64.

Q. What documentary evidence is necessary to prove (*a*) a false answer on attestation; (*b*) enlistment of the accused? P.C. 03

A. 1. One of the two original attestation papers signed by a soldier on his being attested.

2. A copy of the attestation paper, certified to be a true copy by the officer who has custody of the original attestation. **S. 163; K. 1900.**

Q. What documents does the Army Act declare shall be evidence for the purpose of proving— C. 96

(*a*) The answer made by a recruit to questions put to him at attestation?

(*b*) The fact that a certain man enlisted in a certain corps, at a particular place and date?

(*c*) Whether a man, who says he is a deserter from a certain corps, has ever belonged to it or not?

(*d*) The conviction and the sentence passed by a civil court upon a soldier?

A. (*a*) Attestation paper.

(*b*) A certified copy of the attestation paper.

(*c*) A return or letter signed by the C.O. of the corps.

(*d*) Certificate from the Clerk of the Court.

S. 163, 164.

Q. State the law as to the admissibility as evidence of an official letter written by a C.O. P.C. 08

A. A letter written in the ordinary course of official business is a private document, and is only admissible as evidence of facts connected with the service or discharge of a person in His Majesty's Forces. **S. 163.**

P.L. 95 **Q**. Supposing a letter has been written by a soldier on furlough to a comrade, relating to his intended desertion, could it be brought in evidence against him on his trial for desertion?

A. The letter is admissible as showing the intention of the accused (the fact of the letter being written by the accused must be admitted or proved). **M. 18, 72.**

P.L. 95 **Q**. What documents are ordinarily produced in evidence before a court-martial to prove the offence of desertion?

A. The declaration of the Court of Inquiry held when the accused illegally absented himself.

The descriptive return made out by the civil authorities. **S. 72, 163.**

P.C. 10 **Q**. Give your opinion of the following as evidence at the trial of an officer under S. 10 (1).

(*a*) Proceedings of previous court of inquiry.

(*b*) Evidence, for the prosecution, of the wife of the accused.

(*c*) Evidence, for the prosecution, as to the accused being of hasty temper, and been seen striking his servant.

A. (*a*) Not admissible. **R. 124.**
(*b*) Not admissible. **M. 76.**
(*c*) Not admissible. **M. 60.**

S 90 **Q**. What is the law as regards evidence being given of the contents of a writing proved to have been lost or destroyed, or traced to the possession of the adverse party, who refuses to produce or account for it?

A. Secondary evidence of the writing may be given either by producing a copy and calling a witness who can prove the copy to be correct, or when there is no copy obtainable, by calling a witness who has seen the writing and can give an account of its contents. **M. 64.**

Q. State briefly to what statements the term "hearsay" is applicable. Indicate exceptions. P.C. 10

A. Hearsay evidence means the statements, whether in writing or not, made in the absence of the accused by persons who are not called as witnesses, and who, therefore, are not on their oath nor liable to cross-examination.

The following statements, though *hearsay*, are admissible:—

(*a*) *Statements*, forming part of what is known by the name of "*res gestæ*"—that is to say, of the fact or set of facts, or transaction forming the subject of judicial inquiry.

(*b*) *Statements* made by a deceased person against his pecuniary or proprietary interest.

(*c*) *Statements* made by a deceased person in the strict course of business.

(*d*) Dying declarations in trials for murder and manslaughter. **M. 68, 69, 70.**

Q. Give an example of "hearsay evidence." Why is such evidence rejected? P.C. 02

A. Sergeant A., in giving evidence at a court-martial, states, "I was told by a civilian that Private B. was drunk and using bad language in George Street Portsmouth, at 5 p.m. on the 6th instant. He was subsequently apprehended by the military police, etc."

The statement made by the civilian is not admissible, as he is not on oath, and the accused has no opportunity of cross-examining him.

Q. Explain clearly what is meant by a "deposition" and a "dying declaration." Under what circumstances are they admissible as evidence before a court-martial? P.C. 06

A. 1. A *deposition* is the statement taken down in writing of a witness who, by reason of illness or death, is unable to attend in person at a trial.

2. A *dying declaration* is a declaration made by a person killed, as to the cause of his death, or as to any of the circumstances of the transaction that resulted in his death.

3. A *deposition* is admissible as evidence before a court-martial when civil offences are being tried under S. 41 of the Army Act, and then only subject to the following conditions:—

(*a*) That the evidence of the witness is material.

(*b*) That proof is given that the witness is dead or so ill as to be unable to travel to the place where the trial is held.

(*c*) That the deposition was taken in the presence of the accused person, who had a full opportunity of cross-examining the deponent.

(*d*) That the deposition is signed by the justice, by, or before whom it purports to be taken.

4. A *dying declaration* is admissible as evidence only in trials for murder or manslaughter, and then only if it be proved that the declarant, at the time of making the declaration, was in actual danger of death, and had given up *all hope* of recovery. **M. 68, 69, 70.**

C. 07 **Q**. Describe how the "summary of evidence" may be utilized at a court-martial. What subsequently becomes of it?

A. 1. On a plea of "guilty" it is read and annexed to the proceedings.

2. Otherwise it cannot be used as evidence except to show that a witness has made a particular statement, or has contradicted himself.

3. Any statement (but not the evidence) of the accused should usually be read to the court.
4. If not used as evidence and annexed to the proceedings, the summary may be destroyed, but is usually enclosed with the proceedings and sent to the confirming officer. **R.** 17; **M.** 75, 564.

Q. Give the rule of evidence as to opinion and its exceptions. S.E. 04

A. Opinion is not evidence with the following exceptions:—

1. An expert may give an opinion on any point within the range of his special knowledge, but to make the opinion admissible his knowledge must be of a kind not possessed by the court generally.
2. Some facts cannot be sworn to positively, and a witness may swear to the best of his belief as to the identity of a person or thing, or that handwriting was that of a particular person.
3. In cases affecting the conduct, language or deportment of an accused person it will often be necessary to receive the opinion of a witness, *e.g.*, a witness might testify that he saw the prisoner at a particular place and that in his opinion he was drunk. **M.** 71, 72.

Q. An officer is asked to give his opinion as to whether certain facts are in accordance with military usage. Is such an opinion admissible in evidence? P.L. 07

A. No. The matter is of a nature that the members of the court should themselves be acquainted with.

M. 72.

Q. Distinguish between admissions and confessions. P.C. 09

A. *Admissions* are made as to collateral or comparatively unimportant facts, not involving criminal intent, which are not in dispute but must be proved.

Confessions refer directly to the offence committed, and as a general rule are not admissible as evidence against any person except the person who makes them, but to be admissible a confession must be voluntary.
M. 73, 74.

S.F. 03 **Q**. Explain the practice usually adopted at courts-martial as to the admission by either party of unimportant facts.

A. It is usual to admit, without proof, the authenticity of orders, details in an enumeration of stores, validity of signatures, receipt of letters, etc., where admissions may expedite the proceedings and do not go to the merits of the matter before the court.
M. 73.

P.C. 02 **Q**. What is the general rule as regards confessions being admissible in evidence?

A. To be admissible as evidence, a confession must be *voluntary*. It may be caused by religious exhortations, such as that of a chaplain, or by an inducement collateral to the proceedings, such as a promise to the accused by the gaoler that he would be allowed to see his wife, or by inducements held out by a person having nothing to do with the apprehension, prosecution or examination of the accused. A confession does not become inadmissible merely because it was made under promise of secrecy, or in consequence of a deception, or because it was made in answer to questions put to the accused or because the accused was not warned that what he stated would be brought in evidence against him. To make a confession *involuntary* the inducement offered must have reference to the escape of the accused from the criminal charge against him, and must be made by some person having power to relieve him, wholly or partially, from the consequences of that charge. **M. 74.**

Q. A gaoler promises a soldier in arrest that if he will confess his crime he will be allowed to see his wife and family. Is a confession thus made admissible or not as evidence? Give your reasons. P.C.0

A. The confession is deemed to be voluntary, and therefore admissible in evidence.

Though the gaoler is a person in authority, the inducement to confess has no reference to the escape of the accused from the criminal charge made against him. **M. 74.**

Q. What is the law as to the use that may be made at a court-martial of a confession made under a promise of secrecy? P.L.06

A. A confession does not become inadmissible *merely* on account of its being made under a promise of secrecy, or in consequence of a deception practised on the accused. Therefore, it is admissible in evidence, unless the promise of secrecy was given by a person having power to relieve the accused from the consequences of the charge and the accused was led to believe that he would gain some advantage in respect of the proceedings against him. **M. 74, 75.**

Q. In the course of a trial for theft a witness, A., states: "I was talking to B. in the canteen, when the accused came in. B., when he caught sight of him, said: 'That is the man who stole my boots.' The accused turned pale and said: 'It is quite true.'" Comment on above. P.C.08

A. The statement of B. is not evidence that the accused stole the boots, and B. should be called as a witness to confirm that he made the statement. That the accused turned pale, and that he confessed the truth of the statement is admissible, but it must be made clear that the accused heard and understood the statement of B. **M. 68, 74.**

Q. At a court-martial a witness who was present at the investigation of the offence testifies that the accused S. 03

made a statement tending to show his guilt. The accused objects on the ground that he was not warned that his statement would be brought in evidence against him.

A. The statement made by the accused was apparently of the nature of a confession and is admissible as evidence; the accused ought to have been warned, but the fact that he was not warned does not make the confession inadmissible.

The objection must be over-ruled, but the court should enquire as to whether any inducement was held out to the accused by the C.O. which would render the confession involuntary, and therefore inadmissible.
M. 74, 75.

S. 09 **Q**. Comment on the case that arises when a witness testifies to the confession of an accomplice made in the presence of the accused.

A. As a general rule a confession is not admissible as evidence against any person except the person who makes it.

But a confession made by one accomplice in the presence of another is admissible against the latter to this extent, that, if it implicates him, his silence under the charge may be used against him, whilst his prompt repudiation of the charge might tell in his favour.

In cases of conspiracy, after the existence of the conspiracy has been proved, the statement of one mutineer or conspirator as to matters connected with the plot can be used against any other of the conspirators. **M.** 62, 74.

C. 97 **Q**. In considering the admissibility of evidence tendered by witnesses before a court-martial, to what points should the special attention of the court be directed?

A. 1. It must be relevant to the issue, and the best procurable.

2. It must not be in the nature of hearsay or opinion.

3. Confessions, admissions and documents must be legally admissible, and the latter should be verified and properly put in by a sworn witness.

4. The witnesses must be legally competent and their examination properly conducted. **M. 80.**

Q. As president of a court-martial how would you advise the court as to the reception in evidence or otherwise of:— PC 08

(*a*) Statements made in the presence of the accused previous to the trial.

(*b*) Statements made to a witness in the absence of the accused.

A. (*a*) Evidence of such statement is admissible as showing the conduct of the accused when he heard the statement, but it is not evidence that the statement was true.

(*b*) Hearsay evidence and not admissible. **M. 68.**

Q. At the trial of Private W. for stealing a ring, a witness states that when talking to the accused, Private S. came into the room and said that the ring had been found in Private W.'s box. What should be the ruling of the court? P.C.05

A. The evidence is admissible to show the conduct of the accused when he heard the statement. But Private S. is not before the court or liable to cross-examination and therefore his statement cannot be received as evidence that the ring was in the box. **M. 68.**

Q. A soldier throws a missile at a N.C. officer out of a window. When being conveyed to the guard-room the corporal of the escort says: "What sort of a game is this you have been up to?" The soldier replies: "I hate the brute, and wish I had killed him." Is the above admissible as evidence at a subsequent trial under S. 8? S. 08

A. No. A person in custody should not be questioned. His mouth is closed, and an answer extorted by a question, which should not have been put, is not admissible. **M. 74.**

S. 05 **Q**. You are acting as judge-advocate at a general court-martial for the trial of a sergeant for embezzlement when steward of a regimental canteen. The prosecutor produces as evidence: 1st, a tradesman's bill; 2nd, an extract from the canteen stock book; 3rd, a written statement of the accused admitting the receipt of part of the goods. The solicitor for the accused objects to the production of these documents. Advise the court how to act, and give your reasons.

A. The objection to the production of the documents should be overruled, but the court will only admit that the documents are evidence to the following extent:—

Tradesman's bill.—This is evidence that the goods noted in the bill have been ordered of the tradesman on behalf of the canteen, provided that the tradesman swears to its being an accurate account, otherwise it is inadmissible.

Stock book.—This is evidence that the goods noted in the stock book were in charge of the steward of the canteen, provided it is proved that the entries in the book were made by, or by the authority of, the steward.

Statement.—The statement of the accused is a confession, and on proof that it was made voluntarily would be admissible. **M. 74.**

S. 08 **Q**. As a staff officer, you have to read over proceedings dealing with charges of "stealing from a comrade," and "breaking out of barracks" when a defaulter. To what points in each case would you specially direct your attention?

A. (*a*) The evidence should show that there was a clear *intention* to steal, and that the articles were not borrowed, or openly taken. The ownership of the property must be proved, and its identity established.

(*b*) Any written document or order must be produced; oral evidence as to its contents is not admissible.

The original defaulter-roll, guard report, defaulter-sheet, etc., must be put in by a sworn witness. **M. 20. 36,**

SECTION XXIII.

FIELD GENERAL COURTS-MARTIAL.

P.L. 08 **Q**. By whom and when are provost-marshals appointed? What are their duties and powers?

A. For the prompt repression of offences committed abroad commissioned officers may be appointed provost-marshals by the general order of the general officer commanding a body of forces. They cannot inflict punishment on their own authority, but their duties are to arrest and detain for trial persons subject to military law committing offences, and to carry into execution any punishments to be inflicted in pursuance of the sentence of a court-martial. As respects soldiers undergoing field punishment they have the power of a governor of a military prison.

At permanent camps, such as at Aldershot and the Curragh, a provost-marshal is appointed by the Crown, and is the head of the military police and responsible for all police arrangements in connection with the troops or the camp. **S. 74; K. 599.**

P.C. 09 **Q**. By whom and when can field general courts-martial be assembled?

A. 1. By the C.O. or officer in immediate command of a body of troops *on active service*.

2. By any officer in command of a detachment in a country beyond the seas, who has been specially authorized when *not on active service*. **S. 49; R. 105.**

C. 94 **Q**. Under what circumstances may a field general court-martial now be convened in respect of—

1. Place?
2. Offences?
3. Offenders?

A. It may be convened—

1. On active service.
2. For any offence.
3. Committed by persons subject to military law.

It may be convened—

1. Beyond the seas not on active service.
2. For offences against the inhabitants of the country.
3. Committed by persons under the command of the convening officer. **S. 49; R. 105.**

Q. (Field general court-martial.) Give in detail its composition and rank of president. **E.C. 90**

A. Composition.—The court must consist of not less than *three* officers, unless the convening officer is of opinion that three officers are not available and that delay is not practicable, in which case *two* officers may be appointed.

President. — The president would usually be a field officer, but should not be below the rank of *captain* unless, in the opinion of the convening officer, an officer of that or some higher rank is not available. **R, 106, 107.**

Q. What is the law as to their jurisdiction and powers? **P.C. 09**

Jurisdiction.—A field general court-martial can try any offence committed *on active service* by persons subject to military law. Where troops are *not on active service* it can only be convened for the trial of offences against the property or person of some inhabitant of or resident in the country, and the offender must be under the command of the convening officer.

Powers. — The court, if consisting of *three* or more officers, may award any sentence which a general court-martial may award; but if the court pass sentence of death, the whole court must concur.

The court, if consisting of *two* officers, may award any sentence authorized for the offence, not exceeding field punishment or two years' imprisonment.

S. 49; R. 105, 118.

S.E.04 **Q.** A field general court-martial on active service sentences a soldier to six months' H.L.; who will be a competent authority to confirm the sentence?

A. The senior field officer on the spot, but the sentence must be referred to the general in chief command in the field. **R. 120.**

P.C.10 **Q.** Indicate the difference in procedure at a field general court-martial as compared with an ordinary court-martial.

A. The proceedings consist merely of a formal order convening the court, a certificate, signed by the president, that the trial was duly carried out, and a formal confirmation. In a schedule is inserted the name of the offender, the offence charged, the plea, finding, sentence and confirmation. A summary of the evidence should be attached. If a court pass sentence of death, the whole court must concur. Any sentence of death or P.S. must, if practicable, be referred to the officer in chief command of the forces in the field. **R. 118, 120; M. 580.**

P.L.11 **Q.** Comment on the following punishments, which were awarded for offences on active service:—

1. Private A was sentenced by a district court-martial to 112 days' detention, and this was commuted by the confirming authority to 28 days' Field Punishment No. 1.
2. Lance-Corporal B. was ordered by his C.O. to forfeit all ordinary pay for 14 days.
3. Private C. was awarded by his C.O. 14 days' Field Punishment No. 2, and to forfeit all ordinary pay for three months.

A.
1. Admissible. **S. 44.**
2. The C.O. cannot award this punishment to a N.-C. officer. **S. 46.**
3. A C.O. can only award forfeiture of pay up to 28 days. **S. 46.**

SECTION XXIV.

COURTS OF INQUIRY.

Q. By whom can a court of inquiry be assembled? Of how many officers may it be composed? C.08

A. Courts of inquiry may be assembled by the Army Council or any officer in command to assist him in arriving at a correct conclusion on any subject. Three members, the senior acting as president, will in ordinary cases be sufficient. **R. 124; K. 666.**

Q. In what respect do committees and boards differ from courts of inquiry? P.L. **10**

A. The objects for which they are assembled should not involve any point of discipline. **K. 676.**

Q. (*a*) In what circumstances is the evidence given before a court of inquiry to be taken on oath? P.L **10**

(*b*) Are the members of a court to be sworn?

A. (*a*) Always in the case of courts on the illegal absence of a soldier, and of courts on returned prisoners of war, but in all other cases only when the convening officer so directs.

(*b*) No. **R. 124, 125.**

Q. State generally the rules for a court of inquiry ordered to investigate a matter of discipline (not coming under Section 72, Army Act). P.C. 90

A. 1. The court has no judicial power, and cannot compel civilian witnesses to attend.

2. The person whose conduct is being inquired into must be afforded an opportunity of being present, and of giving evidence or making any statement he wishes, and be permitted to cross-examine witnesses and

produce witnesses in defence of his character or military reputation.

3. The court will give no opinion on the conduct of any officer or soldier, unless so directed by the convening officer, and the proceedings of the court or anything that takes place during the inquiry shall not be admissible as evidence against an officer or soldier except in the case of a trial under S. 29, for giving false evidence.
4. An officer or soldier, whose conduct is the subject of investigation, cannot refuse to attend a court of inquiry if ordered to do so, but he may decline to answer questions or to take any part in the proceedings.
5. An officer or soldier whose character or military reputation is, in the opinion of the Army Council, affected by the evidence taken or the report of a court of inquiry, shall be entitled to a copy of the proceedings.

R. 124.

P.C. 10 **Q**. A fire occurs in the Quartermaster's stores, resulting in damage to the extent of £50. What steps are taken, and if no blame is attached to anyone, what would be the procedure as to the loss?

A. A court of inquiry (to include a R.E. officer and the officer in charge of barracks, if available) will be assembled to investigate the case. An estimate from the C.R.E. of the cost of structural repairs will be attached to the proceedings of the court, which are sent to the G.O.C.-in-Chief. The loss will be written off in accordance with App. XXII. **K. 1,021.**

P.C. 05 **Q**. Name the occasions on which a court of inquiry takes evidence on oath without receiving special instructions to do so. Can an officer demand a court of inquiry?

A. 1. In the cases of courts assembled on returned prisoners of war, and on the illegal absence of soldiers.

2. No, but he can demand that his C.O. shall formally investigate the case. **R. 8, 124.**

Q. When a court-martial deals with a case which has previously been submitted to a court of inquiry, what rules must be observed in respect of the evidence adduced at the previous investigation? S. 94

A. The proceedings of a court of inquiry, or any confession, statement, or answer to a question made or given at a court of inquiry shall not be admissible in evidence against an officer or soldier, nor shall any evidence respecting the proceedings of the court be given against any officer or soldier (except in the case of charge under S. 29). But an officer or soldier charged before a court-martial in respect of any matter which has been reported on by a court of inquiry may demand a copy of the proceedings. **R. 124.**

Q. State briefly the privileges to which an officer is entitled, whose conduct is being investigated by a court of inquiry. S.E. 90

A. He must be afforded full opportunity of being present throughout the inquiry and of making any statement he wishes to make, and of giving any evidence he may wish to give, and of cross-examining any witness whose evidence, in his opinion, affects his character, and producing any witnesses in defence of his character or military reputation. **R. 124.** S.E. 90

Q. Describe in detail the regulations and procedure of a court of inquiry on returned prisoners of war. S.E. 02

A. The court will be assembled as soon as possible after the return of the prisoners and the members of the court will make a solemn declaration that they will impartially inquire into the circumstances of the case, and the evidence of the witnesses shall be taken on oath.

The convening officer will direct the court to record their opinion whether the prisoners were taken by reason of the chances of war or through neglect or misconduct on their part. The convening officer will then record his own opinion. **R. 124.**

P.C. 09 **Q**. In what special particular does a court of inquiry on recovered prisoners of war differ from other courts of inquiry?

A. The members of the court are not sworn, but make a declaration on honour that they will impartially inquire into and give an opinion as to how the original capture arose. The evidence will always be taken on oath. **R. 124.**

S. 90 **Q**. May or may not the proceedings of a court of inquiry be used against an officer or soldier before a court-martial? What privilege has the officer or soldier under trial in regard to such proceedings?

A. 1. No, except in the case of a trial under S. 29
2. He is entitled to a copy of the proceedings. **R. 124.**

P.L. 93 **Q**. A court of inquiry has been assembled to declare the illegal absence of a soldier. Can a member of this court afterwards sit on a court-martial for the trial of the soldier when apprehended?

A. No. The member of a court of inquiry respecting the matter on which the charges against the accused are founded cannot sit on the court-martial for the trial of the accused. In order that officers concerned in the inquiry should not through forgetfulness be detailed as members for the subsequent court-martial, it is usual that the record of the declaration of the court of inquiry should be signed by all the members. **R. 19.**

P.C. 09 **Q**. Private B., of the ——— Regiment, is found to be absent without leave at "Tattoo" on the 1st March. In the event of his non-return, what is the earliest date on which the court of inquiry on his illegal absence could be held?

A. 23rd March. **S. 72.**

P.L. 09 **Q**. Describe the procedure to be followed by the court of inquiry.

A. When a soldier has been absent 21 days a court of inquiry is ordered to assemble, which, though not itself sworn, takes evidence on oath sufficient to prove the illegal absence of the man, and any deficiencies in arms, equipment, regimental necessaries, etc., that are proved to have been in his possession within a reasonable time of the date when he absented himself. The declaration of the court with regard to the above facts is recorded in the regimental books, and the record thus made is admissible as evidence of the facts therein stated on the trial of the soldier, and, if he is not apprehended, has the legal effect of a conviction by court-martial of desertion. **S. 72; R. 126; K. 673.**

Q. State briefly what you know about an "absconded recruit." P.C. 08

A. He is a man who, after having been duly attested as a soldier, fails to join his corps or appear at the place to which he has been directed to proceed. It is not necessary to hold a court of inquiry under S. 72 in order to determine his absence.

Q. State the regulations as to the (1) assembly, (2) constitution, (3) method of taking evidence, and (4) record of the proceedings of a court of inquiry assembled to determine the illegal absence of a soldier. P.C. 07

A.

1. *Assembly.*—When a soldier has been absent without leave for a period exceeding 21 days and he has not been taken into custody, a court of inquiry must be at once assembled (except in the case of absconded recruits).
2. *Constitution.*—In ordinary cases three officers.
3. *Evidence.*—The evidence is taken on oath, but the members of the court are not themselves sworn.
4. *Record.*—After taking down the evidence, the court make a declaration in respect of the absence and the deficiencies of kit and equipment (the values of the unexpired wear of all articles of government property being noted). The proceedings are signed by all the members.

The C.O. of the absent soldier will enter in the regimental books a record of the declaration of the court, and the original proceedings will be destroyed.

(The record thus made, or a duly attested copy thereof, is admissible of the facts therein referred to if the soldier is afterwards brought to trial, and if the absent soldier does not afterwards surrender or is not apprehended, shall have the legal effect of a conviction for desertion.)

S. 72, 163 ; R. 125 ; K. 673, 1909.

S.E. 11 **Q.** At a court of inquiry summoned to investigate the cause of injury to a soldier, the court (*a*) request certain civilian witnesses to attend; (*b*) make use of the form of oath laid down for courts-martial to swear witnesses; (*c*) adjourn to obtain the evidence of additional witnesses; (*d*) record their opinion on the evidence. Comment on these actions.

A. (*a*) The court may request civilian witnesses to appear, but has no power to compel their attendance.

(*b*) The court will take evidence on oath if the authority who assembled the court has so directed, but not otherwise.

(*c*) The court should refer to the convening authority, who will direct a re-assembly for the purpose of receiving additional evidence if he thinks fit.

(*d*) A soldier's C.O. will record his opinion on the evidence, stating whether the man was on duty and whether to blame, but the court will not give any opinion.

K. 674; M. 522.

SECTION XXV.

MARTIAL LAW AND THE CUSTOMS OF WAR.

Q. What is martial law? S.E. 05

A. *Martial law* in the Home territory in the *proper sense of the term* means the suspension of ordinary law, and the temporary government of a country or parts of it by military tribunals.

In time of invasion or rebellion it is a name used for the common law right of the Crown to take exceptional measures for the restoration of peace and order.

In a different sense it is a part of the laws and customs of war and consists of rules made by a general-in-chief in the field wholly or partially superseding the laws ordinarily in force in a district. In this sense it has been defined as—

"The law of the soldier applied to the civilian."

"Sway exercised by a military commander over all persons, whether civil or military, within the precincts of his command in places where there is either no civil judicature, or where the civil judicature has ceased to exist." **M. 4.**

Q. Explain the difference between "Military" and "Martial" law. C. 10

A. (*a*) *Military law* is regular in its procedure, and is administered under an authorized code.

(*b*) It deals only with soldiers and persons who, from circumstances, are subjected to the same law as soldiers.

(*c*) With certain limitations it deals with offences committed by persons subject to it, irrespective of time and place.

(*a*) *Martial law* is irregular in its procedure, and has no authorized code.
(*b*) It deals with all persons, civil and military, in time of necessity.
(*c*) It is not retrospective in its action, exists only in time of necessity, and its powers do not exist beyond the proclaimed district.

M. 4, Chap. xiv.

S. 01 **Q.** Martial law has been proclaimed in certain districts in South Africa. Give in a few sentences a warning to officers as to what they should be careful to avoid doing when entrusted with the execution of martial law.

A. 1. An offender cannot be tried for a crime committed before martial law was proclaimed.

2. Martial law does not extend beyond the proclaimed district, and care must be taken that the offender be arrested and tried, and that the offence shall have been committed within the area proclaimed.
3. Courts will be composed of men whose experience and character afford the best security for the exercise of a sound judgment and discretion.
4. In all trials the procedure of courts-martial should be followed as far as practicable, and minutes in writing of the proceedings are to be kept.
5. Prisoners must be given a fair hearing and a reasonable opportunity for answer and defence, and no prisoner should be convicted on hearsay evidence alone.
6. The proceedings of all courts are to be submitted to the local commander-in-chief for confirmation.
7. The jurisdiction of the courts is restricted to the trial of offences committed in causing, or in carrying on, or aiding and abetting the rebellion, or which are a breach of martial law regulations. **Chap. xiv.**

Q. By what authority should martial law be proclaimed (*a*) during the military occupation of a conquered territory, (*b*) in the case of rebellion in a self-governing colony? How are officers indemnified for acts done by them? S.E. 04

A. (*a*) The commander-in-chief of the army.
(*b*) The governor or other civil representative of the Crown.
(*c*) An Act of Indemnity would be passed by the local legislature in the last case. No indemnity is required in the former case, but the general is responsible to his own Government. **M. 4, Chap. xiv.**

Q. Give some of the regulations issued for the administration of martial law in 1899—1902. S.E. 05

A. 1. Military courts—of not less than three members—were formed who, in addition to the punishments of the Army Act could award a fine and order the removal of a person from a proclaimed district. Tried all serious cases.

2. The procedure and forms of general, district and field general courts-martial were used, with the addition in the latter case that all evidence and the defence were written in full. Sentences of death and P.S. had to be confirmed by general officer commanding-in-chief.

3. Minor common law offences and breaches of martial law regulations were summarily treated by a magistrate or authorized officer. Fine up to £10 or imprisonment up to 30 days.

4. Special administrators of martial law were appointed, and dealt with the regulations in their own district.

5. *Jurisdiction.*—Martial law applied to persons, not subject to the Army Act, who were within a proclaimed district. No person was to be tried unless his offence was committed within a proclaimed district and since the date of the proclamation.

P.C. 09 **Q**. Explain clearly the distinction between "an unlawful assembly," "a riot," and an "insurrection."

A. An "unlawful assembly" is a meeting of great numbers of people, with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the King's subjects.

A "riot" is a tumultuous disturbance of the peace by three or more persons assembling together of their own authority, with an intent mutually to assist one another against any who oppose them in the execution of some enterprise *of a private nature and afterwards actually executing the same* in a violent and turbulent manner to the terror of the people.

An "insurrection" differs from a riot in that it savours of high treason, and contemplates some enterprise of a *general and public nature*, and acting in defiance of the government of the country. **M. 211, 212.**

S.E. 06 **Q**. State in general terms the degree of force justifiable to use in suppressing them.

A. An "unlawful assembly" is a meeting of numbers that may be apprehended to cause danger to the public peace. As soon as an act of violence is done it becomes a "riot," while if the act of violence is one of a public nature it becomes an "insurrection."

The "unlawful assembly" should be dispersed with as little force as possible.

A "riot" requires stronger measures, may necessitate the "Riot Act" being read, and dispersion in some cases with aid of soldiers.

Persons engaged in an "insurrection" are guilty of treason, and any degree of force necessary to cope with them is justifiable. **M. 212, 213.**

C. 05 **Q**. Explain briefly the legal position of soldiers who are called out to assist the police in putting down a riot.

A. They are under military law as soldiers, but as citizens are subject to ordinary civil law. They are armed citizens acting as police, and any excess of force used renders them liable to punishment by civil courts. **M. 219.**

Q. On account of grave disturbances troops are called out in aid of the civil power. As senior staff officer you are required to draw up a short memorandum for the guidance of officers in command of troops when acting with the civil authorities. S. 04

A. Memorandum.

The general officer commanding the ——— district desires to impress on all officers in command of troops that may be called out in aid of the civil power, the necessity of adhering strictly to the instructions laid down in the King's Regulations as to duties in aid of the civil power.

In case of serious disturbance the Riot Act should be read by a magistrate, and (except to prevent an actual outrage) no violent measure should be taken until one hour, after the proclamation is read, has elapsed. To fire on a riot is an extreme measure which will seldom be necessary except to prevent violent crimes, such as murder, house-breaking, or arson. The work of dispersing a crowd and arresting individual rioters should be left as far as possible to the police, to whom the troops should form a support. The direct interference of a military force should be avoided unless the police are overpowered.

Any instructions of importance given by a magistrate should be taken down in writing and his signature obtained.

In cases of immediate and pressing danger, an officer is justified in acting on his own responsibility, even although no application has been made to him by the civil authorities, and although no magistrate may be present.

The greatest forbearance is enjoined on officers and men in carrying out a difficult duty. The daily report will be furnished to the general commanding at ———, to which place any emergent messages (always in writing) are to be sent.

K. 948; M. 219.

P.C.05 **Q**. Give a summary of the rules laid down for the guidance of officers in command of detachments acting in aid of the civil power.

A. 1. A magistrate is to accompany the troops and the officer in command is to keep near him. A request by a magistrate to "take action" should be made distinctly and, if possible, in writing.

2. The troops are to march with military precautions to the place directed, and care is to be taken that they are not scattered, detached, or posted in unfavourable situations.

3. Detachments under twenty files will be told off in four sections, and larger detachments into more sections than four.

4. Troops are not to fire except by order of the commanding officer, who is responsible for the measures he adopts. Subordinate officers are not to give an order to fire without definite instructions from the C.O.

5. The command to fire will be given to specified files or sections, and there should be no more firing than is necessary to attain the object sought.

6. The mob or rioters are to be warned that if the troops fire, the fire will be effective.

7. Firing is to cease the instant it is no longer necessary. Care is to be taken not to fire on persons separated from the crowd or to fire over the heads of the crowd.

8. The officer commanding a party will report daily in writing to the War Office, and to the officer commanding the station from which he has been detached. **K. 948**; **M. 291**.

S E 10 **Q**. As officer commanding the troops, you receive a requisition from the chief magistrate of the town in which your troops are quartered for assistance in the maintenance of the public peace. To what extent are you permitted to use your discretion in complying with the request?

A. Subject to paying due attention to the common law, an officer will exercise his discretion as to the necessity of complying with the requisition. Details as to the strength and composition of any force used rests with the military authorities. **M., Chap. xiii., App. I.**

Q. State briefly the responsibility of an officer in charge of troops called out in aid of the civil power to suppress a riot, with regard to ordering (with or without the order of a magistrate) his men to fire or to remain inactive. P.C.93

A. An officer, in all cases where it is practicable, should place himself under the orders of a magistrate. On the other hand, an officer will not perform his duty who, from fear of responsibility, lies by and allows outrages to be committed which it is in his power to check, merely on the ground that there is no magistrate on the spot to give orders to the military.

If the officer and magistrate are acting together, the officer would incur considerable responsibility by firing without his orders, or refusing to fire in pursuance of his orders.

Still, the law of England is that a man obeys an illegal order at his own risk, and circumstances might arise which would justify the officer in firing or not firing, notwithstanding the magistrates might give orders to the contrary. **K. 948; M. 219, 220, and App. I.**

Q. When troops are acting in aid of the civil power, what effect from a legal point has this reading of the Riot Act? S.E.10

A.
1. It involves the legal consequence that if twelve or more persons remain together, riotously or tumultuously, after the expiration of an hour they may be treated as felons.
2. Any twelve or more persons remaining together one hour after the proclamation may be seized and apprehended by any justice or persons assisting him; and the law indemnifies such persons for any injuries they may inflict.

3. To prevent serious outrage or damage it is not necessary to wait for the proclamation to be read, or to wait till one hour has expired after the reading. **K. 955; M. 216.**

A. 04 **Q**. Describe what is meant by the "customs of war."

A. The "laws and customs of war" comprise the rules and regulations, based partly on international custom and partly on written agreements, which are binding on belligerents as to the mode of conducting warfare. **M., Chap. xiv.**

A. 04 **Q**. What general principle governs the means for carrying on war. Give instances of acts considered illegitimate.

A. In the mode of carrying on war no greater harm shall be done to the enemy than necessity requires for the purpose of bringing him to terms.

Instances: Poisoning of water or food, use of explosive bullets, assassination of individuals. **M., Chap. xiv.**

E.C 95 **Q**. In reference to the customs of war, explain what is meant by "paroling," "cartel," "safe-guard," "booty of war," "requisitions."

A. *Paroling* is a voluntary contract sometimes entered into between parties engaged in hostilities. A prisoner of war may be asked to pledge his word or give his *parole* to observe certain conditions in the case of his release, *e.g.*, not to take further part in active service during the existing war.

A *cartel* is an agreement for the exchange of prisoners of war.

A *safe-guard* is a guard posted by a C.O. for the purpose of protecting property or persons from the operations of his own troops.

Booty of war is the term applied to the property of the enemy found on the field of battle, or in the camp or town taken by assault.

Requisitions are the means adopted by a belligerent of making the inhabitants of a district or town contribute to the expenses of a war. They may be required to furnish—

1. Supplies without payment.
2. Supplies at a price which is fixed by order.
3. Supplies to an open market.
4. Levies of money. **M., Chap. xiv.**

Q. Write a short essay on the administration of martial law in South Africa. **S. 02**

A. In the year 1900 the greater part of South Africa was under martial law. The legislatures of Natal and Cape Colony passed acts creating special courts for the trial and punishment, without juries, of persons charged with high treason and crimes of a political character. The jurisdiction of these courts, both in regard of time and the classes of offences dealt with, was limited, and eventually martial law was nearly everywhere administered by military courts acting under detailed instructions.

The following principles were laid down. The persons subject to martial law were those within the limits of the proclaimed districts who were not subject to military law under the Army Act. No person was to be arrested or tried under martial law except for an offence committed within a proclaimed district, and since the date of the proclamation.

Ordinary common law offences, except such as rendered the offender liable to trial by military courts, were, if practicable, to be dealt with by a magistrate under the ordinary law.

Minor breaches of martial law regulations were to be summarily treated by an authorised officer or magistrate, who could award a fine up to £10 or imprisonment up to thirty days.

Treason, aiding or abetting the enemy, overt acts endangering the safety of H.M. Forces, and serious breaches of martial law regulations, were to be tried by military courts. The procedure laid down for field general courts-martial was to be strictly followed, with the addition that all evidence and the defence of the prisoners were to be written in full.

The military courts, consisting of not less than three members, in addition to the punishments authorised by the Army Act, could award a fine, and order the removal of a convicted person from a proclaimed district. Sentence of death and penal servitude had to be confirmed by the general commanding-in-chief.

The commandants of districts were responsible for the administration of martial law in the territory they controlled, but eventually special administrators of martial law were appointed for each area, who dealt solely with martial law and did not exercise any military command.

S. 01 **Q**. Write a precis of the principles of the customs of war as applied to the question of taking possession of the property of an enemy.

A. It is lawful to take from the enemy everything that conduces to his means of resistance, such as arms, stores, and in general all moveable property belonging to the hostile state. The use of public land and buildings and the receipt of the profits accruing from them, form part of the spoils of war. The property of establishments devoted to religion, charity, education, arts and sciences, though belonging to the State, should be treated as private property.

Private property or land, except in retaliation for acts of hostility, is not seized or injured, so far as is consistent with the exigencies and operations of war.

M. Chap. xiv.

SECTION XXVI.

MISCELLANEOUS REGULATIONS.

Q. Describe the manner in which an officer who thinks himself wronged by his C.O. should seek redress. **C. 08**

A. He should apply first to his C.O., and if he does not receive redress, may complain, through the authorized channel, to the Army Council, who are required to examine the complaint, and, if it be necessary, report through the Secretary of State to His Majesty. Officers may also make any complaint to an inspecting general officer. **S. 42; K. 127, 439.**

Q. If a soldier considers that he has a grievance to complain of, what steps may he take to obtain redress? **E.C. 10**

A. When a soldier has any complaint to make he should ask a N.-C. officer to take him before the captain of his company. If redress is not obtained from the captain the soldier may ask that the case be referred to the C.O., and if satisfaction is not then forthcoming may further demand that his complaint be forwarded to the prescribed general officer.

Soldiers are also allowed to make any complaint to an inspecting general officer. **S. 43; K. 127, 439.**

Q. Is it permissible for a number of soldiers to make a combined complaint? **A. 04**

A. No, but they should not, if a complaint is made in good faith, be treated as mutinous. **S. 43; R. 439.**

Q. Enumerate the various entries that are made in the regimental conduct book. **C. 02**

A. In it are entered every case of—

1. Conviction by court-martial or award of punishment by a captain of His Majesty's ships.
2. Dispensation for trial for desertion and fraudulent enlistment.

3. Conviction by the civil power (after enlistment), unless omission of entry is specially authorized.
4. Severe reprimand of a N.C.O.
5. Cases of reduction of a N.C.O. to a lower grade of rank or deprivation of a lance-stripe (for an offence).
6. Award of detention.
7. C.B. exceeding 7 days.
8. Every instance of drunkenness.
9. Punishments on board ship equivalent to a regimental entry.
10. Offence entailing forfeiture of pay (except as above in 3), and except where the offence is absence without leave, not exceeding two days.
11. Conviction under S. 6 of the Reserve Force Act.
12. Punishment awarded to prisoners in detention barracks.
13. Admission to hospital on account of drink.
14. Any especial act of gallantry. **K. 1916.**

P.L. 10 **Q**. When a soldier is bound over by a court of ordinary criminal jurisdiction to appear for conviction what entry, if any, is made in his conduct sheet?

A. An entry to the effect is made in the regimental conduct-sheet, unless otherwise decided by an officer not under the rank of Brigadier-General. When an entry is made a certified copy of the order of the court is annexed to the sheet. **K. 1916.**

PC. 03 **Q**. State the regulations as to the entry in conduct books of offences of drunkenness and absence without leave.

A. Acts of drunkenness are numbered consecutively in red ink.

Forfeiture of pay for absence is noted under the head of "remarks." **K. 1917, 1921.**

S. 01 **Q**. In a conduct sheet there is an entry of "drunk and breaking out of barracks." Would this be considered one or two entries in making out A.F.B. 296 for the purpose of showing a prisoner's character.

A. Two entries. Whether an offence be punished summarily or by court-martial the principle should be observed that "each charge should state one offence only." The method of bracketing two offences together, though frequently done, is objectionable. **R. 11.**

Q. Enumerate the summary awards of a C.O. which would be entered in the regimental conduct sheet. How would the fact of a regimental entry being made affect a recruit? **P.L. 93**

A.
1. Severe reprimand of a N.C.O.
2. Deprivation of a lance-stripe, for an offence but not for inefficiency.
3. Detention.
4. Punishment for drunkenness.
5. C.B. exceeding seven days.
6. Punishment on board ship declared to be equivalent to the above or to a regimental entry.

The *recruit* before he obtains his first good conduct badge will have to serve two years clear of the regimental conduct book, from the date of the entry made against him, or, if the award be H.L. or D., from the date of the termination of such punishment.

K. 1916; P.W., 1017.

Q. What is a "company conduct sheet?" By whom is it kept up? What entries should be made in it? **E.C. 10**

A. A form, containing a record of a soldier's conduct. It is kept in a guard book, which is in the custody of the company commander, who enters the offences and punishments.

A record is made of every offence for which punishment has been awarded, except offences (other than drunkenness) for which one day's C.B. or one guard or picquet has been awarded. Admonition is not entered except in cases of drunkenness, and those involving forfeiture of pay. **K. 1921.**

C. 96 **Q**. In what conduct sheet, if any, would the following cases be entered:—

1. Private A.—Seven days' C.B. (forfeits two days' pay).
2. Private B.—Fined 5s. and seven days' C.B.
3. Lance-Corporal C.—Deprived of lance stripe.
4. Sergeant D.—Severely reprimanded for overstaying his furlough six days.
5. Corporal E.—Reduced to the ranks by order of the Army Council for inefficiency.
6. Private F.—Admonished and awarded one day's C.B. by his captain for having a dirty rifle.

A. 1. Company conduct sheet.
2. Regimental ,, ,,
3. Regimental ,, ,,
4. Regimental ,, ,,
5. Not entered.
6. Not entered. **K. 1916, 1921.**

C. 00 **Q**. In what conduct books, if any, would entries be made in the following cases:—

(1) Fined 5s., 7 days' C.B.
(2) 7 days' C.B. (forfeits 2 days' pay).
(3) Fined 5s. by Civil Court (fine paid).
(4) Deprived lance stripe.
(5) Admonished (for drunkenness).

A. (1) Regimental conduct book.
(2) Company ,, ,,
(3) Regimental ,, ,, (unless specially exempted).
(4) Regimental ,, ,,
(5) Regimental ,, ,, **K. 1916, 1921.**

P.L. 08 **Q**. When is admonition entered in the company conduct sheet?

A. In cases of drunkenness and in those involving forfeiture of pay. **K. 1921.**

P.C. 07 **Q**. In what case is no entry made (of a civil conviction?)

A. 1. When the offence was committed prior to enlistment.
2. When no punishment has been awarded.
3. When the sentence is a fine and the offender has not undergone imprisonment in default of payment, and an officer not below the rank of Brigadier-General has ordered that the entry shall not be made. **K. 1916.**

Q. Under what circumstances is the company conduct sheet of a soldier who enlists after 1st February, 1907, to be destroyed? P.L.08

A. 1. On completion of six months' service.
2. On completion of two years clear of an entry.
3. On promotion to sergeant.
4. On discharge and transfer. **K. 1922.**

Q. When a unit proceeds on active service what is done with the company and regimental conduct sheets? How are they kept up? P.L.09

A. 1. Company sheets left at base record office.
2. Regimental sheets forwarded to officer in charge of records.
3. All entries made in captain's pocket book, from which copies will be sent periodically to the base record office, and there compiled. **K. 1919, 1923, 1924.**

Q. State the procedure on loss of a conduct sheet? C.O.09

A. A court of inquiry obtains evidence as to entries and the C.O. causes a new sheet to be drawn up and substituted or the lost one. **K. 1908.**

Q. Describe the mode of enlistment under the Army Act. P.L.99

A. A "recruiter" gives to the person wishing to enlist a notice embodying the general conditions of the contract to be entered into, and directing him to appear before a justice of the peace. The justice shall ask him if he understands the notice and is willing to be enlisted. If he assents to be enlisted he will be cautioned not to make false answers, and be required to sign the various declarations in the attestation paper and take the oath of allegiance. **S. 80.**

P.L. 91 **Q**. When a recruit presents himself for enlistment before a justice, (*a*) what constitutes the actual enlistment and makes the man a soldier; (*b*) what points should be attended to by the justices in completing the man's enlistment?

A. (*a*) Signing the declaration and taking the oath of allegiance.

(*b*) The justice.

1. Cautions the person desiring to enlist that if he makes any false answer to the questions read to him he will be liable to be punished.
2. Reads to him the questions set forth in the attestation paper, and takes care that he understands them.
3. Records the answers given opposite each question.
4. Requires the person enlisting to sign the declaration as to the truth of the answers given.
5. Administers the oath of allegiance. **S. 80.**

S.E. 90 **Q**. When may a soldier's service be "extended," "prolonged," and "continued"?

A.

1. A soldier originally enlisted for a term of army service and reserve service may, with his assent, be permitted to "extend" his army service for all or any part of the residue unexpired of such term or to "extend" the term of his original enlistment up to 12 years.
2. In time of war, or when the reserve is called out by proclamation, or when a soldier is in service beyond the seas, a soldier who would otherwise be entitled to be discharged may have his army service *prolonged* for one year. **S. 87.**
3. A soldier who has completed, or will within one year complete 21 years' service, may be permitted to *continue* in the service by a competent military authority, but may at any time claim his discharge by giving three months' notice. **S. 78, 85, 87.**

Q. Under what conditions may a soldier re-engage? **P.L. 92**

A. After the expiration of not less than nine years' army service a soldier may, subject to the conditions laid down in the Recruiting Regulations, be permitted to re-engage.

As a general rule, N.-C. officers are allowed to re-engage after completing nine years' service, and private soldiers after completing eleven years' army service. **S. 84.**

Q. Up to what time can a person serving as a soldier claim his discharge on account of an illegality in his enlistment? **S.E. 05**

A. If the soldier has received pay for three months, he is deemed to have been duly attested, and is not entitled to claim his discharge on the ground of any irregularity in his enlistment. **S. 81, 100.**

Q. Catalogue the various ways in which a soldier can be transferred from one regiment to another. **P.L. 04**

A. 1. If enlisted for general service, within three months of attestation.

2. If invalided from abroad or medically unfit to go abroad.
3. If ordered abroad and is within two years of end of his army service.
4. If serving abroad and is ordered home or to another station, and has more than two years' army service unexpired.
5. When his punishment for an offence has been commuted, wholly or partially, to general service.

(A soldier may at any time with his own consent be transferred to another corps.) **S. 83.**

Q. How would the following cases be treated? **P.C 06**

(*a*) A soldier wishes to be transferred to another corps in order to serve with his brother.

(*b*) The 4th battalion of an infantry regiment is ordered to be disbanded, but the authorities are desirous that the men should complete the term of their original enlistment.

A. (*a*) As a rule, the younger brother should be transferred by the O.C. of his corps, but if such transfer is objected to, the G.O.C.-in-Chief, on appeal, can transfer either brother to serve with the other.

(*b*) The men may be posted to any other battalion of the same regiment, but cannot be transferred to another regiment except by consent. Recruits, however, if enlisted for general service, can, within 3 months of date of attestation, be transferred to any infantry regiment. **S. 82, 83; K. 333.**

P.L.91 **Q**. How may a soldier be discharged from the army?

A. The terms of the attestation of a soldier bind him to serve so long as his services are required within the period for which he agrees to serve. Consequently the Crown has always a right to discharge a soldier if his services are not required. But a soldier cannot be discharged except by order of the Sovereign, or by statutory power such as the sentence of a court-martial or by "order of the competent military authority." **S. 92.**

P.L.01 **Q**. What is the law concerning the power of a recruit to purchase his discharge?

A. A recruit, within three months after the date of his attestation, can obtain his discharge by payment of £10, except in case of imminent national danger or great emergency, when His Majesty has by proclamation suspended all transfers to the reserve, when the discharge will be deferred until the directions mentioned in the proclamation are revoked. **S. 81.**

P.C.01 **Q**. State briefly the law concerning the exemptions of soldiers in respect of civil process?

A. They are not liable to be taken out of the service or compelled to appear in person before a court of law except (1) on account of a charge of or conviction for crime and (2) on account of any debt, damages, or sum of money, when the amount exceeds £30 over and above the costs of the suit, and this exemption does not apply to a soldier required to attend as a witness. **S. 144.**

Q. A soldier owes a debt of £25. In default of payment he is sentenced by a court of summary jurisdiction to three months' H.L. What action would you, as his C.O., take? P.L.09

A. Assuming the possibility of such a procedure, you would complain to the court, and claim discharge of soldier under S. 144, with reasonable costs for expenses of return.

Q. Captain C is summoned to serve on a jury in two days time. He is under orders to go to Hythe for a musketry course the same day. Indicate the course to be pursued. P.C.10

A. He must obey the summons and ask for exemption from service, as he has to attend to military duties. He should take the first opportunity of claiming his legal right to have his name removed from the jury list. For being late at Hythe he would have a good excuse. **M. 209.**

Q. How does the position of a soldier who owes money differ from that of a civilian? P.C.04

A. He cannot be arrested or compelled to appear before a court on account of any debt under £30. The exemption applies to the person, pay or military equipment of the soldier, but not to any of his private property. **S. 114.**

Q. What conditions must be fulfilled in order to render a master's claim for the discharge of an apprentice who has enlisted, effective? P.C.09

A.
1. The apprentice must be under the age of 21, and have been bound before the age of 16 by a regular indenture for at least 4 years.
2. The master must within one month of the absconding of the apprentice take an oath before a justice of the peace as to the facts of the case. **S. 96.**

S.E. 07 **Q**. A civilian applies to you for the discharge of his son on the ground that he is not 18 years old. How as C.O. would you deal with the case?

A. If satisfied from birth certificate that the soldier is under 17 years of age, proceed with discharge. If the soldier is between 17 and 18 years of age, forward an application to brigade commander with documents noted in K. 390 (vi.).

P.C. 06 **Q**. How would a commanding officer deal with the following case:—A woman states that she recognises Private A. as her husband who deserted her some years ago, and claims his discharge?

A. If A. has not served six months, apply for alimony or charge under S. 99 with a view to discharge.

If he has served six months and it is considered desirable to retain the man's services, the C.O. will inform the wife that the soldier can only be discharged if claimed by the parish.

Authority for payment of alimony if claimed by the wife must be obtained from the brigade commander.

K. 390.

P.C. 97 **Q**. In what sections or paragraphs of the official books will you find guidance in dealing with the following matters:—

(1.) A soldier claims his discharge in consequence of an illegality in his attestation.
(2.) The parish authorities apply for a soldier's discharge in consequence of wife desertion.
(3.) A recruit after being attested fails to join his corps.

A. (1.) S. 100. K. 390. M. 188.
(2.) K. 390. M. 208.
(3.) K. 514, 673. M. 188.

P.C. 01 **Q**. Describe the position of a soldier in respect of his liability to maintain his wife and children?

A. 1. The Secretary of State shall, if satisfied as to the case, order a deduction from the daily pay of the soldier to be appropriated to the costs of maintenance of his wife and children.

2. The daily deduction shall not exceed 1s. in the case of a sergeant, and 6d. in the case of any other soldier in respect of the cost of maintenance of wife or children. **S. 138, 145.**

Q. A soldier has been committed to prison by a magistrate for the non-payment of a bastardy order. Is this legal? S.E. 05

A. No. The person of the soldier is protected by S. 145; application must be made to Secretary of State.

Q. What accommodation must be provided by a keeper of a victualling house upon whom an officer or soldier is billeted? .E. 10

4. The keeper of a victualling house shall furnish lodging and attendance for the officers, lodging, food, and attendance for the soldiers, and stable room and forage for the horses; and shall receive payment for the same in accordance with the schedule of the Army Act. **S. 106.**

Q. At what time or times should payment be made for such accommodation, and what authority regulates the prices of any food or forage supplied? S.E. 10

A. An officer or soldier should pay when he departs, and if he remains longer than four days, then every four days. The prices to be paid are stated in the Army Annual Act at the time in force. **S. 106.**

Q. A battalion is marching. On reaching a bridge on the route, a toll is demanded for the vehicles of the transport. Explain the law on the subject. S.E. 09

A. All officers and soldiers of His Majesty's regular forces on duty or on the march (and their horses and baggage and all prisoners under military escort, and carriages and horses employed in conveying troops or military stores) are exempt from duties and tolls on piers, landing places, bridges, and turnpike roads.

(Boats, barges, or vessels employed on canals are only exempt from tolls when supplied under a requisition of emergency). **S. 115, 143.**

P.C. 92 **Q**. A party accompanied by impressed carriages are escorting prisoners in plain clothes (supposed to be deserters) on the line of march in England. Have toll dues to be paid for any portion of the party? Would the carriages on the return journey have to pay tolls?

A. No toll dues would be paid in either case. **S. 143.**

S. 03 **Q**. Explain the differences that arise with respect to the impressment of carriages under an ordinary route and under a requisition of emergency.

A. Under an ordinary route an officer can only demand from the civil authorities such animals, carriages and drivers as are required for moving the regimental baggage and stores of the troops.

Under a requisition of emergency can be demanded carriages and horses of every description, and barges and other vessels used in inland navigation for the conveyance of persons as well as baggage.

Whenever a proclamation ordering the Army Reserve to be called out on permanent service or an order for the embodiment of the Militia is in force, carriages, animals and vessels may be purchased as well as hired on behalf of the crown, and such carriages, animals and vessels may, if not forthcoming or refused, be forcibly taken possession of. Troops moved under a requisition of emergency are exempt from all tolls. **S. 112, 115.**

S.E. 06 **Q**. State briefly the regulations in connection with a "requisition of emergency."

A. See last answer. **S. 115.**

P.C 05 **Q**. A deserter states that he pawned certain articles of his necessaries in the town. What proceedings might be taken?

A. The pawnbroker may be summoned, or, if necessary, apprehended without warrant, and if convicted by a magistrate of wilfully buying the articles is liable to a fine of £20 or treble the value of the articles. For a second offence, imprisonment up to six months may be substituted for fine. **S. 156.**

Q. Give the authority for the following statements: C. 05
(1.) A non-commissioned officer cannot be awarded a summary punishment.
(2.) A sergeant is not to be tried by any court-martial inferior to a district court-martial.
(3.) A regimental court-martial cannot try a civil offence under S. 41 without special permission.

A. (1.) K. 499.
(2.) K. 438.
(3.) K. 487.

Q. Quote the authority for the following statements: **P.L. 05**
(1.) A prosecutor may comment on the fact that the prisoner gives his evidence after hearing the evidence of his own witnesses.
(2.) On a trial for a military offence the deposition of an absent witness is not admissible.

A. (1.) R. 41 (note).
(2.) M. 70.

Q. State in full detail the regulations as to the **S.E. 07**
enlistment of aliens in the Regular Forces.

A. 1. In each case consent of the Crown, signified through the Secretary of State, is required.
2. Numbers in any corps not to exceed the proportion of 1 to every 50 British subjects.
3. An alien so enlisted cannot hold a higher rank than warrant officer.
4. But any inhabitant of a British Protectorate or negro or person of colour may be enlisted, and while serving is entitled to the privileges of a British subject.
5. A naturalized alien has the same privileges as a British subject, and can be enlisted in like manner. **S. 95**; **M. 189.**

Q. Explain clearly what is meant by an "accessory **S.E. 07**
after the fact." To what punishment is such a person liable?

A. 1. In cases of felony an "accessory" is one who assists the felon to evade justice by comforting, hiding, or any active measures that prevent his apprehension.

2. Two years' H.L., or in case of murder P.S. for life. **M. 90, 110.**

S.E. 07 **Q.** A soldier on active service is, through his wounds, in danger of his life. What facilities are afforded to him for legally disposing of his property?

A. 1. He can make a nuncupative will, *i.e.*, a will without writing declared before witnesses.

2. Probate of will is exempt from stamp duty.

3. By the Regimental Debts Act special provision is made for realising and disposing of his effects. **M. 209, 669.**

P.C. 08 **Q.** State briefly what you know as to—

(1.) A protecting certificate.
(2.) An absconded recruit.
(3.) A cognate offence.

A. (1.) A form issued to a committed deserter who is not claimed for service as a soldier, or a person abroad who cannot at once be tried and whom it is undesirable to retain. **K. 518, 519.**

(2.) A person who has been attested as a soldier but does not join the corps to which he is sent. **K. 514.**

(3.) An offence of a similar character to another, though in a technical or legal sense somewhat different. **S. 56; R. 44.**

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